

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1920

No. [REDACTED] 79

JOSEPH GILBERT, PLAINTIFF IN ERROR,

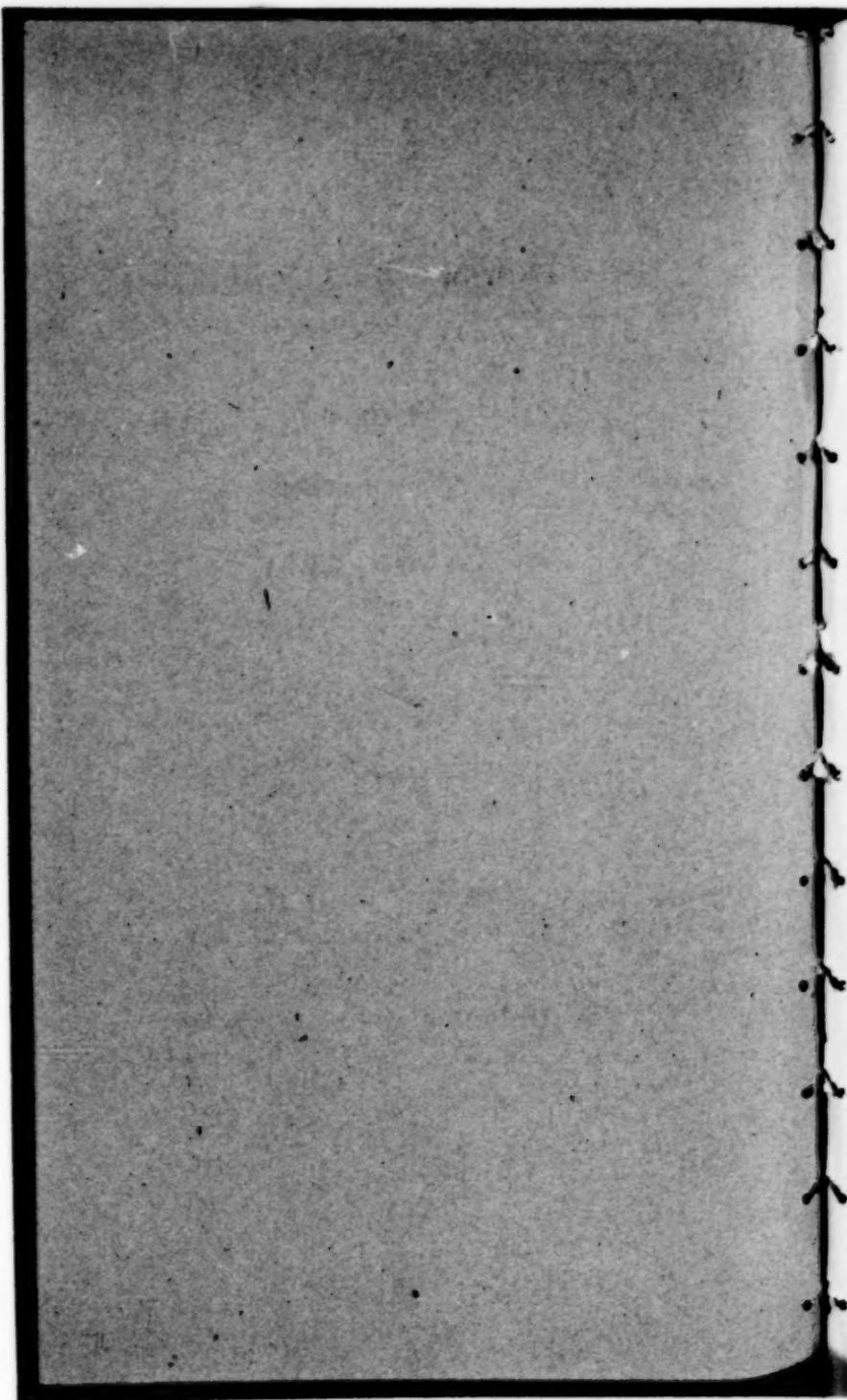
vs.

THE STATE OF MINNESOTA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

FILED MARCH 24, 1920.

(37,017)



(27,017)

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INDEX.

| | Original. | Print. |
|---|-----------|--------|
| Caption | 6 | 1 |
| Transcript of record from the district court of Goodhue County. | 1 | 1 |
| Indictment | 1 | 1 |
| Demurrer to indictment..... | 3 | 2 |
| Settled case..... | 4 | 3 |
| Testimony of Andrew Finstuen..... | 5 | 3 |
| Gilbert A. Flom..... | 54 | 29 |
| Dr. Joseph A. Gates..... | 80 | 42 |
| John Wollacker..... | 108 | 57 |
| Albert Hillstad..... | 130 | 69 |
| Charles A. Lindholm..... | 152 | 80 |
| O. F. Henkel..... | 172 | 90 |
| C. C. Lawson..... | 181 | 95 |
| P. P. Exeth..... | 192 | 101 |
| Lars H. Underdahl..... | 200 | 105 |

| | Original. | Print. |
|--|-----------|--------|
| Testimony of Dr. George H. Overhold..... | 205 | 108 |
| C. F. Smith..... | 207 | 109 |
| Joseph Gilbert..... | 215 | 113 |
| Charge to the jury..... | 229 | 120 |
| Verdict | 239 | 125 |
| Order remanding case for new trial..... | 240 | 126 |
| Wilson's request to charge..... | 240 | 126 |
| Defendant's request to charge..... | 241 | 126 |
| Order settling case..... | 254 | 133 |
| Motion to vacate verdict and judgment or for new trial.... | 255 | 133 |
| Order on motion to vacate..... | 257 | 135 |
| Notice of appeal..... | 258 | 135 |
| Exhibit 1—Telegram | 258 | 135 |
| 2—Information | 259 | 136 |
| 3—Complaint | 262 | 137 |
| Clerk's certificate..... | 265 | 138 |
| Petition to stay execution, &c..... | 266 | 139 |
| Order granting stay of execution..... | 268 | 140 |
| Affidavits of George Nordlin and orders extending time to file record, &c..... | 269 | 141 |
| Affidavit and order remanding case for a new trial..... | 274 | 145 |
| Proceedings on second trial..... | 274 | 145 |
| Indictment | 274½ | 146 |
| Demurrer to indictment..... | 276 | 148 |
| Verdict | 277 | 149 |
| Sentence | 278 | 149 |
| Notice of appeal..... | 280 | 151 |
| Bond on appeal..... | 281 | 151 |
| Clerk's certificate..... | 283 | 153 |
| Opinion, Taylor, C..... | 284 | 154 |
| Judgment | 290 | 157 |
| Petition for reargument and brief thereon..... | 291 | 159 |
| Order denying petition for rehearing..... | 300 | 166 |
| Prayer for reversal..... | 301 | 166 |
| Petition for a writ of error..... | 302 | 167 |
| Assignment of errors..... | 308 | 171 |
| Bond on writ of error..... | 311 | 173 |
| Affidavit and supersedeas order..... | 312 | 175 |
| Writ of error..... | 314 | 176 |
| Citation and service..... | 316 | 177 |
| Clerk's certificate..... | 317 | 178 |

a STATE OF MINNESOTA:

In Supreme Court, 1918.

21089.

STATE OF MINNESOTA, Respondent,

vs.

JOSEPH GILBERT, Appellant.

RECORD.

George Nordlin, Thos. V. Sullivan, Frederick A. Pike, Arthur Le Sueur, Attorneys for Appellant, St. Paul, Minnesota.

Clifford L. Hilton, Attorney General, St. Paul, Minnesota.

Thomas A. Mohn, County Attorney of Goodhue County, Attorney for Respondent, Red Wing, Minnesota.

1 STATE OF MINNESOTA:

In Supreme Court.

STATE OF MINNESOTA:

District Court, County of Goodhue, First Judicial District.

THE STATE OF MINNESOTA, Respondent,

against

JOSEPH GILBERT, Appellant.

Indictment.

Joseph Gilbert is accused by the Grand Jury of the County of Goodhue, State of Minnesota, by this indictment of the crime of discouraging enlistment of men in the military and naval forces of the United States, and advocating that the citizens of said state should not aid and assist the United States in prosecuting and carrying — war with the public enemies of the United States, committed as follows:

The said Joseph Gilbert on the 18th day of August, A. D. 1917, at the Village of Kenyon, in the County of Goodhue, State of Minnesota, then and there being, did, then and there, at a public place where more than five persons were then and there assembled, unlawfully and wilfully teach and advocate by word of mouth and oral speech that men should not enlist in the military and naval forces

of the United States and that the citizens of the State of Minnesota should not assist the United States in prosecuting and carrying on war with the public enemies of the United States, said United States being then and there at war with the Kingdom and Imperial Government of Germany; by then and there stating and expressing to and in the presence of Joseph A. Gates, Andrew Finstuen, Gilbert A. Flom, John A. Bradley, Thomas A. Tasa, Charles Lindholm, and Albert Hilstad, all being then and there citizens of the State of Minnesota, in substance and effect as follows, to-wit: We are going over to Europe to make the world safe for democracy, but I tell you we had better make America safe for democracy first. You say, what is the matter with our democracy. I tell you what is the matter with it: Have you had anything to say as to who should be president? Have you had anything to say as to who should be Governor of this state? Have you had anything to say as to whether we should go into this war? You know you have not. If this is such a great democracy, for Heaven's sake why should we not vote on conscription of men. We were stampeded into this war by newspaper not to pull England's chestnuts out of the fire for her. I tell you if they conscripted wealth like they have conscripted men, this war would not last over forty-eight hours, contrary to the form of the statute in such case made and provided against the peace and dignity of the State of Minnesota.

Dated at Red Wing, in the County of Goodhue, in the State of Minnesota, this 14th day of March, A. D. 1918.

H. P. HUHBAK,
Foreman of Grand Jury.

Witnesses examined before the Grand Jury: Joseph A. Gates, Andrew Finstuen, John Wallaker, Albert Hilstad.

(Title.)

Demurrer.

Comes now the defendant in the above entitled action and demurs to the indictment herein, upon the grounds that it appears from the face thereof:

1.

That more than one offense is charged in the indictment and it is not a case where such is allowed by statute.

2.

That the facts stated do not constitute a public offense.

Dated this 22nd day of March, 1918.

THOMAS V. SULLIVAN AND
F. A. PIKE,
Attorneys for Defendant, St. Paul, Minnesota.

JOSEPH GILBERT VS. STATE OF MINNESOTA.

STATE OF MINNESOTA:

District Court, County of Goodhue, First Judicial District.

(Title of Cause.)

The above entitled action came duly on for trial before Hon. Albert Johnson and a Jury at the March, 1918, General Term thereof, held at the City of Red Wing, Goodhue County, Minnesota, on the 8th day of May, 1918, Messrs. Mohn & Mohn appearing as attorneys for the State and George Nordlin, Esq., and F. M. Wilson, Esq., appearing as attorneys for the defendant, when the following proceedings were had.

After a jury had been selected the Court took an adjournment until tomorrow morning at 9 o'clock.

May 9th, 1918. Court resumed.

ANDREW FINSTUEN, being first duly sworn, testified as follows:

Examined by Mr. Mohn:

Q. Where do you reside?

A. Kenyon, Minnesota.

Q. How long have you lived there?

Mr. Nordlin: At this time the defense objects to the introduction of any evidence under the Indictment on the ground the facts stated in said Indictment do not constitute a public offense, and, further, upon the ground that Section 3, Chapter 463 of the laws of Minnesota, 1917, under which this Indictment is brought, is unconstitutional, as being in violation of Paragraph 27, Article two separate and distinct causes of action or public offenses stated in this Indictment, that the same is a duplication, and upon the further ground there is nothing in the Indictment alleging that the defendant had any intent whatsoever of violating any of the provisions of said Chapter 463, or causing any of the results intended to be prevented by said Act; and upon the further ground the statements attributed and imputed to said defendant in said Indictment were statements of opinions which, under the laws of this State and the Constitution of this State and the laws and Constitution of the

United States, he had a right to make, without, at the same time, the same becoming a violation of any law of the State or of the United States.

The Court: Objections overruled.

Exception noted.

Q. What is your business?

A. I am a practicing attorney and publisher of the Kenyon Leader—one of the publishers of the Kenyon Leader.

Q. How long have you been engaged in business, in publishing the Kenyon Leader.

A. Been publishing the Kenyon Leader or one of the publishers of it ever since 1901.

Q. Were you in the Village of Kenyon, Goodhue County, Minnesota, on the 18th day of August, 1917?

A. I was.

Q. Did you see the defendant Joseph Gilbert on that day?

A. Yes, I did.

Q. About what time of day?

A. It was in the evening between eight and nine o'clock.

Q. Where did you see him in the Village of Kenyon?

A. It was on the street in the Village of Kenyon, in a speaker's stand or what we call over there a "Band Stand," which was standing at that time on the street in the middle of our large business block there.

Q. What was this Band Stand; what did it consist of?

A. Of a large platform. On a portable arrangement like a truck or a wagon; it is moved from place to place on wheels, drawn either by horses or from place to place by hand power; used principally for the band and moved where it is wanted for the particular occasion.

Q. At the time in question where was this platform?

A. It was right in the middle of the large block, as we call it, on Main Street, in front of what is known as the A. G. Burg Hotel.

Q. On the south side of Main Street in the middle of the block?

A. Yes.

Q. Main Street is the chief business block?

A. It is the only business street; that is where there are the stores and business places.

Q. Did you see anybody else at that place at that time?

A. Yes.

Q. Who? Who was there?

A. Albert Hillstad was there, Dr. Gates was there, Charles Lehman, Thomas Tasa, O. F. Henkel, J. Wallaker, and Mr. Bradley and Mr. Randall and L. W. Martin and John Bradley and Harry Salthron.

Q. Where was the defendant, Mr. Gilbert?

A. He was in the speakers' stand on this platform.

Q. Where were the other persons whose names you have given?

A. Round the speakers' stand or platform, on the stand or wagon or close by the sidewalk and the people, most of them were right on the sidewalk on the north side of the stand and on the other side the street and all around the stand, some nearby and some further away.

Q. About how many people were there would you say?

A. I should judge somewhere between two and three hundred people, at least two hundred and possibly quite a few more.

Q. Did you hear the defendant, Gilbert, make a speech to these people from that platform?

A. Yes, I did.

Q. Do you recollect what he said?

A. Yes, some of it I do.

Q. Will you state to the Court and jury what he said as far as you recollect?

A. Yes, sir. He said, "Mr. Randall has spoken to you at some length and he has pretty well covered the purposes and objects of the Nonpartisan League and I do not know if there is much for me to add, but the Nonpartisan League is an organization which is intended to bring together the producers and organize them industrially. We hear much talk these days about political democracy, but, I tell you, it is just as necessary to organize industrially. What in all this country is industrial Democracy? We are going over to Europe to make the world safe for democracy! but, I tell you, we had better make America safe for democracy first." He says, "What is the matter with our democracy?" He says, "I tell you what is the matter with it. Have you had anything to say as to who should be President? Oh!—he says—"That is such a high office. But have you had anything to say as to who should be Governor of this State? Have you had anything to say as to whether or not we should go into this war? You know you have not. If this is such a great democracy, for Heaven's sake why should we not vote on the conscription of men. We were stampeded into this war by newspaper not to pull England's chestnuts out of the fire for her; if they conscribed wealth, like they did men, this war would not last forty-eight hours." He says, "I understand they are sending a load of coffins to France, I don't know what they are going to use them for but I hope they will not be used for American boys."

Mr. Nordlin: I move the last part of that be stricken out, not covered by the Indictment.

The Court: I believe it is not one of the alleged words.

Mr. Mohn: It tends to characterize the allegations in the Indictment.

The Court: That last part about the coffins will be stricken out.

Q. Did Mr. Randall speak before Mr. Gilbert spoke?

A. Yes, he had spoken just prior to Gilbert.

Q. While Gilbert was speaking, did anybody in the crowd there say anything to Gilbert?

A. While Gilbert was speaking?

Q. Yes.

10 A. Yes.

Q. Who, if you know?

A. I don't know who it was, someone in the crowd, I am not sure who it was, said "What is the matter with Wilson?" and Gilbert said, "I don't know what is the matter with him; do you?" Then someone in the crowd said, "Hurrah for Wilson, three cheers for Wilson!" and at that point Gilbert sat down and Mr. Randall got up and he said, "Yes, we will—we will——

Objected to what Randall said at that time.

Objection sustained.

Q. Did you hear anybody else say anything.

A. In the crowd there?

Q. Yes. State to the jury.

Objected to what anybody said in the crowd, for the reason the question as now framed is too indefinite.

Mr. Molan: I wish to show the effect of Gilbert's speech upon the audience there.

Objected to, calling for the conclusion of this witness.

Mr. Molan: I want to show how the audience there took the speech and what they did and what they said.

Mr. Wilson: That is objected to as incompetent, irrelevant and immaterial; calling for the conclusion of the witness.

The Court: If there are any facts that would tend to show in any way what the effect or influence of that speech was, I imagine it is competent.

11 Q. You may go on and state what occurred?

Objected to.

Q. What did the crowd say and do?

Same objections.

The Court: You may show what occurred at the time of the speech.

Q. State what took place?

A. At the very last part of Gilbert's speech he said——

Mr. Wilson. Objected to, not covered in the charge in this Indictment.

The Court. It may be a circumstance bearing upon the question whether the words were spoken. I take it there is a denial that the words were spoken. The facts and circumstances which occurred at the time may be shown as bearing upon the question of whether or not Mr. Gilbert spoke those words.

Exception noted.

The Witness: He said, "The way to stop this war is to urge upon Congress to conscribe wealth. You may say this is sedition, but, if this is sedition make the most of it." "I have a right to advocate the repeal of a bad law; the conscription law is a bad law and it should be repealed." Just at that time someone in the crowd said, "Shut up; you have gone just far enough." Mr. Gilbert said, "Why should I shut up?" "You are talking against the Government of the United States."

Q. Who said that?

12 A. The man in the crowd said you are talking against the Government of the United States. He said, "I am not."

Then someone in the crowd said, "Let us throw the whole outfit in the river," and following that came the matter with re-

erence to Wilson. Somebody hollered, "What is the matter with Wilson?" Gilbert said, "I don't know what is the matter with him, do you?" Then the other things with reference to Wilson. Then Randall got up and took his place.

Q. That was at the close of Gilbert's speech?

A. Yes, that was the very last.

Cross-examination.

By Mr. Nordlin:

Q. How old a man are you?

A. Forty-two.

Q. How long have you been practising law?

A. Sixteen years.

Q. At Kenyon?

A. Yes.

Q. How long have you been in the newspaper business?

A. Since 1901.

Q. You knew this meeting was going to be held before that day, didn't you?

A. Yes; Louis W. Martin told me about it.

Q. You were on the platform at that meeting?

A. Yes.

Q. You were introduced by Mr. Martin as the Chairman of that meeting?

A. I don't know; Mr. Martin did not introduce me—I introduced Mr. Martin—

Q. As a matter of fact were you not introduced as the Chairman of that meeting?

A. I was not.

Q. Did not you introduce the speakers there that night?

A. I did.

Q. What were you, if you were not Chairman?

A. I did introduce the speakers, I was Chairman.

Q. You know what a Chairman is, don't you?

A. He did not introduce me as Chairman but I was Chairman all the time.

Q. And you first introduced Mr. Randall?

A. I first introduced Mr. Martin.

Q. And after Mr. Randall got through you introduced Mr. Gilbert?

A. Yes, that is true.

Q. Did you make any notations of this meeting?

A. Yes, I did.

Q. Have you these with you?

A. Yes.

Q. Let me see them?

A. Yes.

Q. You made a statement as to what you say Mr. Gilbert said at this meeting, starting with the words, "We are going over to Europe to make that safe for democracy" and concluding with the words,

"If they would conscribe wealth like they do men this war would not last forty-eight hours." Was that all said in continuation?

A. No, not all of it.

14 Q. Tell me how it is you repeat it in exactly the same manner you have, with these exact sentences following one after the other?

A. I gave you what he said right along.

Q. How did you happen to use these exact sentences in these exact places?

A. Well, I remember he said so.

Q. Have you listened to the Indictment in this case?

A. No, sir.

Q. Yet, you say, this was not said in regular continuity, sentence after sentence; it was just sentences taken out of his speech, yet you follow this Indictment word for word?

A. Some of it was continuous just as I gave it.

Q. Yet you can repeat it word for word; sometimes two or three repeat word for word this Indictment without having seen the Indictment?

A. I have not seen the Indictment.

Q. Yet you can repeat it word for word; sometimes two or three minutes elapsed between the expressions that you have mentioned here, is not that true?

A. Yes, he gave it practically as I gave it here just now.

Q. When did you first bring to your mind the recollection of what he said there?

A. I don't know what you mean?

Q. When did you first stop to recollect what Gilbert said at that meeting?

15 A. I thought of it several times; I made the notes in the book for the newspaper and I looked it over when I headed the article giving the account of the meeting.

The Witness: And I thought of it many times and we talked about it over there many times as to what in the world he did say anyway.

Q. With whom have you talked it over?

A. I talked with several about it; we talked with people there—

Q. With whom?

A. Lots of people.

Q. Name a few of the people?

A. There is A. J. Brugge at Kenyon and I was talking with J. C. Lohmann about it.

Q. Why don't you mention some of the other fellows you talked to; who went with you to the Grand Jury?

A. You mean, whether I talked with Dr. Gates about it?

Q. You know what I mean.

A. I have talked with Dr. Gates about it, yes.

Q. You have given them this exact language?

A. No; just talked about what was said—

Q. You have not committed this language to memory?

A. No, I have not.

Q. Yet, you sit here and wish this jury to understand when you repeat this word for word in the language of the Indictment that you have not committed this to memory?

A. Substantially; I would not swear it was word for word but I do swear it is substantially what he said.

16 Book marked Exhibit 1 for identification.

Q. I show you this small book, marked Exhibit 1 this is a memorandum book you have been using?

A. Yes.

Q. Everything in here has been scratched out, practically, has not it?

A. When I am through with it I mark it off but there may be notations in there I did not mark off.

Q. This is the only notation you have ever made in that book lengthwise, is not that true?

A. I don't know.

Q. From your observation of this book that is the only notation you have ever made which is lengthways of the book?

A. Perhaps that is true.

Q. You have here, written in very small handwriting, when did you write that?

A. At the time the speech was made.

Q. Up there on the platform, listening to the speaker you made this notation as to what the speaker said?

A. Yes.

Q. In very small handwriting with a pencil?

A. Yes.

Q. Does it have reference to the speech of Mr. Randall?

A. Some of it does.

Q. And the other to Gilbert, will you just read what you had written there as to what Gilbert said?

A. "We are going over to Europe to make the world safe for democracy but, I tell you, we had better make America safe for democracy first. Then there is an abbreviation, I see, "Matter with it"—The President—the government of this State—The President; the war; we were stampeded into the war by newspaper not to pull England's chestnuts out of the fire for her."

Mr. Nordlin: I offer Exhibit 1 in evidence.

Received without objection.

Q. This notation is made on a page of the book which provides for Diary entries for the 16th, 17th, 18th, 19th, 20th, 21st, and 22nd, of December—it is on the December page of that book?

A. Yes. That has nothing to do with—I started to use the book in January, 1917, I think; I think I have the date there—January 5th, 1917—and I was not keeping that memorandum by months or weeks, just whenever there was a blank space.

Q. You are the Editor of the paper known as The Kenyon Leader?

A. I am one of them.

Q. You are the man who writes most of the Editorials?

A. Yes.

Q. You knew in advance this meeting was going to take place?

A. Yes, I knew it that day.

Q. You knew that Mr. Martin was going to be there?

18 A. Yes, sure.

Q. You knew he had been making speeches?

A. No; he had just arrived there in Kenyon; I had only met him that one time.

Q. He told you he was going to have some good speakers there?

A. He told me he was going to speak himself at the meeting at Kenyon; I saw him that day; he said, I am going to hold a meeting and speak. I said to him, "Well, what kind of a speech are you going to make—

Mr. Nordlin: Objected to.

Q. I am asking you whether Mr. Martin told you he was going to make a speech there?

Objected to as immaterial.

Objection sustained.

Q. Now, Mr. Finstuen, your office is located how far from where this Band Stand was at that time?

A. About two doors.

Q. There were two to three hundred people there?

A. Yes.

Q. You knew there was going to be quite a meeting there?

A. Yes.

Q. Yet, your office being only two doors away from there—instead of getting paper from there, you mean to tell this jury you made your notations, what you made there, in this little book?

A. I am telling the jury that; and you,

19 Q. You testified before the Grand Jury with reference to the speech of Mr. Martin, that he is supposed to have made at that place, did you?

A. Yes, sir.

Q. And the same witnesses who testified at the time you did before the Grand Jury with reference to this Gilbert case, also testified before the Grand Jury with reference to this other case?

Objected to as immaterial.

Objection sustained.

Mr. Nordlin: We wish to show this witness to have testified that this man Martin made a speech at Kenyon that night in which he used word for word identically the same language that is charged to Mr. Gilbert and that this witness and other witnesses testified to that before the Grand Jury.

The Court: This witness could not testify what other witnesses testified to before the Grand Jury. Objection sustained.

Exception noted.

Q. Didn't you testify before the Grand Jury, when the matter of the Indictment against Mr. Martin, as to the speech supposed to have been made by him at that same meeting that same night at Kenyon, if you did not say he said then, "We are going over to Europe to make the world safe for democracy, but I tell you we had better make America safe for democracy first." "You say, what is the matter with our democracy? I will tell you what is the matter with it. Have you had anything to say as to who should be President? Oh! that is such a high office. But have you 20 had anything to say as to who should be Governor of this State? Have you had anything to say as to whether or not we should go into this war? You know you have not. If this is such a great democracy, for Heaven's sake why should we not vote on conscription of men. We were stampeded into this war by newspaper rot to pull England's chestnuts out of the fire for her. If they would conscript wealth, like they did men, this war would not last forty-eight hours." Did not you testify to that before the Grand Jury?

Objected to as immaterial.

Objection sustained.

Exception noted.

Mr. Wilson: The Indictment which was returned into this Court on the 14th day of March, against one Louis W. Martin, on which Indictment is endorsed the name of this witness, in the body of that Indictment is the language of the charge in this Indictment. It is going to his credibility here as a witness, whether or not he is correct in his recollection of the language used by Mr. Gilbert, whether he has not got mixed up with the language he remembers in connection with one Martin, going only as to his credibility as a witness, not as a substantive charge but as bearing upon his recollection, his memory. There is also another Indictment in this Court, dated at the same time, upon which the name of this witness appears, against one Randall, in which Indictment, not exactly as in this charge, but similar in language, is claimed to have been 21 used by on Randall, as the witness testified before the Grand Jury, must have testified in order to have made that Indictment. Now, that goes simply to his credibility as a witness, and we propose to follow it up by introducing this Indictment in the record here, to show the testimony of this witness before the Grand Jury in the other case; and we wish to ask the Court to charge with reference to the credibility of this witness in that regard, not as a substantive charge but as to his memory.

The Court: You can test his memory of course.

By Mr. Nordlin:

Q. Did not you testify before the Grand Jury at the time a hearing was on with reference to the Martin speech the language from which I have read you?

A. As to whether he said these things?

Q. Yes.

A. I did not testify that he said those words.

Q. You did not testify?

A. I did not testify he said those words.

Q. Meaning this man, Martin?

A. I did not testify that Martin said the words I attribute to Gilbert or Randall—I did testify that—

Objected to.

Mr. Mohn: Go on.

Mr. Nordlin: I object to any statements as to what was said with reference to the Martin case except he has denied he made those statements.

The Court: If you asked him what he said about it he
22 should give it all.

Mr. Nordlin: I did not ask him that; I asked him if he used that language, that is all.

The Court: Having opened up that subject and if you do not wish to ask the question the other side may ask it.

Mr. Nordlin: I asked him if he made the statements. I read to him and he said "No."

The Court: Go on with the examination of your witness.

Q. You said Mr. Gilbert said in regard going over to Europe to make the world safe for democracy, "I tell you we had better make America safe for democracy first?"

A. Yes.

Q. Are you positive Mr. Gilbert said that?

A. Yes.

Q. And not Mr. Randall?

A. Mr. Gilbert is the one who said that.

Q. Did anybody else say it at the meeting?

A. No.

Q. You are positive of that?

A. Didn't use those words.

Q. Anyone use that impression?

A. Yes.

Q. Didn't Mr. Gilbert instead say this, "In the words of President Wilson we have to make the world safe for democracy?"

A. He did not say, "In the words of President Wilson."

Q. Will you say he did not refer to Wilson during his entire speech?

23 A. No, I will not say that but in connection with that statement he did not.

Q. Did he refer to President Wilson in that speech?

A. He mentioned Wilson's name when the crowd spoke to him about it.

Q. Will you state, during his main speech, up to the time of the interruption, he never used any reference to President Wilson?

A. I don't remember now that he did. Of course I don't claim

that he could not have done it or did not do it, but, as far as I remember he did not.

Q. As far as you remember he did not?

A. Yes.

Q. As editor of a local paper you know that phrase was coined only a few days before by President Wilson?

Objected to.

Q. I am asking you if you do not know that?

Objected to as immaterial.

Objection sustained.

By Mr. Wilson:

Q. Mr. Finstuen, what time on the evening of August 18th, did you go up on that platform?

A. It was between eight and nine.

Q. Will you describe to this jury who were on the platform when you got up on the platform?

A. You mean after we had gotten up on the platform?

Q. Yes.

A. I sat over on the south side of the stand——

24 Q. That stand is about how wide and about how long and about how high from the ground?

A. About sixteen feet long and about fourteen feet wide; it has a railing, about like this (indicating), about that high, round it and it has a roof over it; the roof rests on studdings or rafters at the corners and in the middle and this railing there has seats on the inside round it where the men who are on the platform may see. The speakers were facing north—it was near the north sidewalk and I sat in the center on the south side, on this bench near the railing on the south side. Mr. Randall sat on the west side of me, pretty much towards the west end; Mr. Gilbert sat next to him but he was on the west side, facing east, and then there were some women——

Q. How many?

A. There were two, at least, there might have been more but there were at least two women.

Q. Were there more than two?

A. Would not say positively, I know there were two.

Q. Do you know who they were?

A. No, I do not.

Q. Was there anybody else, female, except the two women?

A. I could not say for sure about that.

Q. Didn't you see a young girl along with one of the ladies there?

A. There might have been; I don't deny that.

Q. There might have been?

A. That is true.

25 Q. You don't know the number?

A. I could not say positively but I do remember distinctly there were two women there and then there was at the extreme east

end of the platform Mr. Breidall and Mr. Martin; those were the people on the platform besides myself.

Q. In all, how many?

A. Eight, including myself; there might have been one or two more; don't know for sure.

Q. Your best recollection now is that there were at the time this speaking began, on this platform or Band Wagon Stand, eight persons?

A. There were at least that many, yes.

Q. And the stand was up against the sidewalk on the north side of the Main Street?

A. Yes.

Q. About in front of where Mr. Burg's hotel or restaurant is?

A. Yes, sir.

Q. And the speakers in addressing the crowd were facing to the north?

A. Yes.

Q. And you were sitting about behind the speakers?

A. Yes, sir.

Q. And the meeting began between eight and nine o'clock?

A. Yes. Mr. Martin said the meeting would begin at eight o'clock and I met Mr. Martin and Mr. Gilbert and Mr. Randall and Mr. Breidall on the way to the speakers' stand, and one of them said, "it is past the time announced for the meeting," and I said, 26 "they always begin late," and at that time I looked at my watch and it was some past eight then and we walked together up to this platform.

Q. Now, when you say, "We walked together," you mean Martin, Gilbert, Randall and these two ladies, Breidall and you?

A. There were some women then who were either in front of us, or right of us, or right by us there; I noticed some women that came with us and got up on the speakers' wagon.

Q. You went up on the Band Wagon and sat down?

A. Yes.

Q. Going up some steps.

A. Yes.

Q. There was nothing hitched to the Band Wagon at that time, was there?

A. No.

Q. So that it was up there against the sidewalk?

A. Yes.

Q. Do you remember that you opened the meeting or did Mr. Martin open the meeting?

A. I opened the meeting.

Q. And did you make an opening talk?

A. Just a few remarks.

Q. Are you able to give me what you said?

A. I think so, practically.

Q. Can you state exactly what you said?

A. I can, the substance of it.

27 Q. Will you state to this jury whether you can give the exact words you used when you opened that meeting?

A. Almost.

Q. That does not answer my question—can you give the exact words you used when you opened that meeting? Answer that, Yes, or No.

Objected to.

The Court: He may answer the question.

A. Yes.

Q. Please state to the jury just the words you used?

Objected to, immaterial, irrelevant.

Objection overruled.

A. I said, "Ladies and Gentlemen, Mr. L. W. Martin, who, as I understand, is here in the interest of the Nonpartisan League, has called a meeting, as he says to explain the objects of this League. Inasmuch as he is here to organize Goodhue County it will be interesting, I am sure, for all of us to hear what this movement is—personally I don't know anything about it and I for one should be very glad to know. He tells me he has men here tonight, happening to come through here, who know all about the League; one of them an officer of the League, and they are going to speak to you. I introduce first, however, Mr. Martin, who says he wishes to make just a couple of announcements before the speaking begins. Then I called for Mr. Martin.

Q. That is as definite and certain as your present recollection is, just the words you used?

A. That was the substance of it; I would not swear that 28 they were the exact words.

Q. You will not swear under oath those were the exact words but as near as your recollection goes that is the substance of them?

A. Yes; I know that was the substance of them.

Q. Meaning to say it is not the exact words?

A. As near as I can recollect now, it is.

Q. Mean to say they are not the exact words?

A. As near as I remember they are the exact words.

Q. But you don't mean to say they are, as a matter of fact, do you?

Objected to; the witness has answered again and again.

The Court: He may answer.

A. I can't say; I might have deviated, there might be one word I left out or something like that; I admit that—

Q. You say you may have deviated?

A. As to the exact wording but the substance was just what I said.

Q. Now, you did introduce Martin?

A. I did.

Q. Are you able to tell this jury, as a matter of fact, how long Martin talked there?

A. Well, pretty closely, he did not speak then over five or ten minutes.

Q. Now, as bearing upon your memory, are you able to state what Martin said there at that time?

A. Yes.

29 Q. Did he do anything more than make the announcements? Did he not state there was then present two speakers of the Nonpartisan League who would explain to the audience the doctrines or arguments or tenets or whatever words he used, of the Nonpartisan League?

A. Yes, words to that effect.

Q. And you say that he spoke for about five minutes?

A. Five or six minutes.

Q. Simply to announce that they had speakers and would talk about the Nonpartisan League?

A. No, he said something more.

Q. Did he say that?

A. He said that.

Q. Then Mr. Randall was introduced by you?

A. After Martin was through; yes, sir.

Q. And Randall made a speech in which he talked about what the Nonpartisan League stood for, didn't he?

A. Among other things; yes, sir.

Q. He spoke of its rise in North Dakota as a political party, didn't he?

A. Yes.

Q. He spoke of its having elected to Congress one John M. Baer, didn't he?

A. No; I don't think so; he did not say anything about Mr. Baer.

Q. Didn't he speak about the grading of wheat in North Dakota?

A. No, I think not.

30 Q. Didn't he speak of dockage of the Elevators in North Dakota?

A. He spoke about the elevators generally, that is they stole from the people.

Q. Didn't he speak about the State Officers in North Dakota and what the League had succeeded in doing?

A. He spoke of the Nonpartisan League in North Dakota and being in control of the Legislature and that every officeholder was Nonpartisan or endorsed by the Nonpartisan League, from the Governor of the State to the Janitor in the Court House.

Q. That it was the Party that would fill the coffers of the farmers and make everybody happy, didn't he say?

A. He said it would be a great improvement over present conditions.

Q. How long did Mr. Randall talk?

A. The first time he got up he talked I should judge about thirty minutes, then he spoke afterwards for about ten minutes.

Q. Now, after Randall got through talking you introduced Gilbert, didn't you?

A. Yes.

Q. When you introduced Mr. Gilbert, don't you know he first complimented the people that had listened to the fine address from the preceding speaker, Randall?

A. He said that Mr. Randall had covered the ground in reference to explaining the League in such a way that he didn't know as there was much for him to say.

Q. Can you give me the words that Gilbert first used when he opened his speech to the people at Kenyon?

A. Those were the words.

Q. Kindly repeat them again?

A. He says, "Mr. Randall, the former speaker, has spoken to you with reference to the objects of the Nonpartisan League and he has covered the ground so well that I don't know if there is much for me to do."

Q. What did he next say?

A. He said, "That it is one of the objects of the Nonpartisan League to bring together the producers of wealth—organize them industrially."

Q. What further did he say?

A. He said, "That we hear so much nowadays about political democracy, I tell you that what we need just as bad and more than anything else is industrial democracy—"

Q. Didn't he say at that time that charges had been made of disloyalty against the Nonpartisan League?

A. No, sir.

Q. He did not say that?

A. He did not say that.

Q. Did he say where the Nonpartisan League stood with reference to the war?

A. Not in so many words; just as I have stated it.

Q. Did he say anything about the war in connection with the Nonpartisan League?

A. Well, no; not in any other way than I have stated.

Q. Didn't he speak with reference to the public transportation lines in this country?

A. Well, Randall did.

Q. Did Mr. Gilbert—not Randall—I am talking about Gilbert?

A. I say he did not say anything about it.

Q. Did Mr. Gilbert say we ought to conserve all our industrial forces to carry on this war?

A. No, he did not.

Q. Did not he talk about the packing plants?

A. No, not Gilbert.

Q. Didn't he talk about the flouring mills?

A. Not Gilbert.

Q. You swear he did not?

A. Yes.

Q. Did he talk about the public ownership of the railroads?

A. Not specially. He said, "That you people should own everything in connection with productions or manufactures yourselves because we are experiencing high prices and you are the people who ultimately have to pay the price."

Q. Did he not say, In addition to men it was necessary to carry on this war that we must conserve all our resources, take charge of the materials, take charge of the elevators, all that sort of thing and that we ought to bring wealth in to aid in the prosecution of the war?

33 A. No, sir; he did no such thing.

Q. Will you swear he said nothing of that kind?

A. I positively swear he did not. He said, "That you producers should own everything in connection with the handling of your product and getting it to market and get it so as to eliminate the middleman. The middlemen, he said, were parasites, you know we are experiencing high prices and it is to a great extent the fault of the middlemen and you are paying the prices."

Q. Didn't he say the agricultural workers and laborers of this land should combine just as the Industrial laborers had combined in Unions and so forth?

A. Words to that effect, I think yes.

Q. He was talking on lines of economy and on lines of politics, was not he?

A. Yes.

Q. Give me any words he used with reference to the line of economy, the co-operation of the industries of this country?

A. Nothing more than what I gave you a moment ago with reference to the necessity of organization.

Q. Is that all you can state?

A. Yes; that is all I can state with reference to that now; Mr. Gilbert did not speak very long.

Q. How long did he talk?

A. I judge about twenty minutes.

34 Q. Do you remember he stated anything about the platform or the results that were got by the North Dakota combination?

A. Not Gilbert.

Q. Mr. Gilbert did not?

A. Mr. Gilbert did not.

Q. You remember that fact was referred to?

A. Yes, Randall referred to it.

Q. What is the first sentence touching the question of war that you remember distinctly that Gilbert used?

A. This sentence, which he used almost immediately after he started. "We are going over to Europe to make the world safe for democracy—

Q. We are going over to Europe to make that safe for Democracy?

A. Yes, sir.

Q. Is that what he said?

A. That is what he said.

Q. And are those the exact words he used?

A. Yes, sir.

Q. Will you swear he did not say, "In the language of President Wilson we are going over to Europe to make that world safe for democracy?"

A. Yes, I swear he did not say that.

Q. Didn't he use the name of President Wilson at all?

A. Not in that connection.

Q. Did he any connection?

A. He mentioned Wilson as I have stated before.

The Court: That part of the case was cross examined by Counsel Nordlin?

35 Q. I am not going into that; I was just only testing his memory.

Q. You say he referred to the president—I don't mean Wilson, now—can you give us the words he used with reference to the President?

A. He asked the question, "Have you had anything to do as to who should be President of the United States?"

Q. I show book, Exhibit 1, that, you say, you had in your hands at the time of this speaking?

A. Yes, sir.

Q. How did you hold that book?

A. I don't remember just exactly how I held it.

Q. Did you hold it in your hand or put it on your knee, or how?

A. I could not say, I have no recollection just what I did; most likely kept it down on my knee, like this (indicating).

Q. Do you know how you held that book?

A. No; I could not positively state how I did hold it.

Q. Is there any writing on that page, from the top to the bottom written in order or did you write first on the bottom and then go up to the top?

A. What is written on the top was written first.

Q. Is everything that is written below that written in its order?

A. No.

36 Q. Then the writing on that page is not in the order in which the sentences were uttered?

A. Why, not necessarily, but—

Q. Are they?

A. Some of it is—

Q. What is?

A. This part where the questions are asked with reference to whether or not you have anything to do with electing a President. This down here (indicating)?

A. Yes.

Q. When did you put that in there?

A. At the time it was stated.

Q. How long after you put it up here at the top?

A. Mr. Randall spoke first and Gilbert followed him and I made the note at the time each spoke.

Q. Then you mean to say now you kept it right along down; did not write down the bottom and then come up here at the top?

A. I certainly did not.

Q. You wrote it all along in the order in which it shows?

A. Certainly.

Q. You swear to that?

A. Certainly.

Q. Now, you have stated everything you remember now that Mr. Gilbert said?

A. No; I remember some other things; I have not stated all I remember.

37 Q. Please state then, further things that he stated?

A. At the time he said that this—"You say, this is sedition but if this is sedition make the most of it." He said, there is—

Q. When was it he said that; was it the first part of his speech or along towards the end of his speech?

A. Towards the end of his speech.

Q. He only spoke once?

A. Yes.

Q. It was continuous from the time he commenced until he closed; then he did not say any more?

A. Except that the interruption occurred towards the very end. "They probably have a secret service man in the crowd here tonight, and here is what I have to say. I should not be surprised if they had because I have had one hounding me for months," but, he says, "They don't get anything on me, I am too smooth for them." And he says, "Let them take me and hang me and do anything they want with me—

Q. Was anybody threatening to hang him out there at that time?

A. No, sir.

Q. Had there been any noise before that time?

A. No; not at that time; no.

Q. There was not any noise before that time?

A. Not to speak of; he had not been interrupted at that time.

38 Q. Tell the jury about the first interruption that was made that evening and by whom it was made, as far as you know?

A. I can't tell you who made it; it was someone in the crowd spoke to him—I can't say who it was.

Q. Will you swear it was not Joseph A. G. —?

A. No; I could not swear to that; I don't know who it was.

Q. Hence you will not swear it was or it was not him?

A. No.

Q. Do you know what it was that was said?

A. Yes.

Q. What was it?

A. The first interruption I heard was that someone said, "Ah! you are making a Pro-German speech. He says, "I am not."

Q. Did he not say, "How about an Englishman making a German speech?"

A. He said something about that later on.

Q. So he did say he was an Englishman, didn't he?

A. No, he did not say that. Someone said to him, "You are a Pro-German." He said, "I am not." Someone in the crowd said, "You are a Canadian." "Yes," he says.

Q. Who said that; who asked him if he was a Canadian?

A. I don't know; someone in the crowd.

Q. And what did he say?

A. He said he was.

Q. Canadian?

39 A. Yes, someone in the crowd said, "You are Canadian." He says, "Yes."

Q. You are absolutely sure of that?

A. Yes.

Q. You can't tell who said it?

Q. You can't tell who said it?

A. No, there were several voices in the crowd, not definite.

Q. What further interruption?

A. Gilbert says, he says, "That is good, he says, an Englishman make a pro-German speech?" Then someone said——

Q. Go ahead now. Wait! You do remember he said, "An Englishman make a pro-German speech?"

A. Yes.

Q. You will swear he did use those words?

A. Yes, that is what he said.

Q. Now, go ahead.

A. Then there was some noise in the crowd; I could not catch everything, but the next thing I could make out that anyone was saying was, someone said, "Now, you shut up, you have gone far enough."

Q. Who said that? Mr. Gates?

A. No; I do not know who it was.

Q. What reply if any, did Gilbert make to that?

A. He says, "Why should I shut up?" And somebody said, "Yes, you are." "Why should I shut up?" "Because you are talking against the government."

40 Q. Why on earth didn't you put that down here in this book instead of putting this down (indicating).

A. That is all I put down; I put down things I thought sounded strange.

Q. Then the other, you did not think sounded strange?

A. I don't know; I did not think much about that at the time. I had left the platform when these remarks were made, and was down on the ground about ten feet from the platform.

Q. You said a little while ago that someone sang out there in the crowd, "That is sedition."

A. No; I did not say that.

Q. "Against the Government."

A. Yes, "You are talking against the government."

Q. At that time was there anybody that said that speech or "your talk is sedition?"

A. I can't say I heard it; there might have been such a thing said.

Q. No! Unless you know?

A. I don't know; I did not hear it at least.

Q. Now, do you remember this defendant at that time saying, "Come up here on the platform and show whether I am against the government or whether my talk is seditious?"

A. No.

Q. Will you say he did not say that?

A. I will say I did not hear that.

Q. At the time before Mr. Gilbert spoke had there been anything said about the war?

41 A. Before Gilbert spoke?

Q. Yes.

A. Randall referred to the war.

Q. How long did he refer to the war?

A. Well, he spoke for about half an hour but his speech was mostly with reference to something else.

Q. Mostly with reference to the Nonpartisan League? Of course?

A. Yes.

Q. You are sure, are you, so as to be positive, that Mr. Randall did speak about the war in his first speech?

A. Yes, sir.

Q. Now, at the time you sat there behind Mr. Gilbert and was making minutes in this book and was Chairman of that meeting, did you raise any protest yourself?

A. No, I did not.

Q. You did not say a word, did you?

A. No, sir, I did not.

Q. Even after he finished you did not get up, as Chairman, and say you did not approve of any such talk?

A. There was no chance to get up.

Q. I ask you, did you?

A. There was no chance to get up.

Q. Did you?

A. No.

Q. When it was over did you speak about it afterwards?

A. We spoke about it that same evening.

42 Q. To whom?

A. John H. Bradley of Cherry Grove.

Q. Anyone else?

A. Yes, Fogelson and A. T. Brekke.

Q. Anyone else?

A. Henry—

Q. Anyone else?

A. Not that I remember that evening.

Q. Are you able to tell this jury what you said to Mr. Brekke that evening?

A. Yes.

A. I said to him, "What do you think of that meeting?"

Q. Anything further?

A. I think that was all I said; he might have said something.

Q. Are you sure those were the words you used?

A. Yes.

Q. Can you tell the words you used to the next person you have named?

A. The first one I spoke to was Bradley.

Q. You have told us about him. Anyone else?

A. Henry—

Q. What did you say to him?

A. I did not say anything to him; he spoke to me and we talked about it.

Q. You don't remember of saying anything to him?

A. I answered he was the one that spoke to me about it.

Q. Who was another one you spoke to?

43 A. I don't remember distinctly now, that is that evening.

Q. Who, after that, did you speak to first?

A. I talked with Mr. Holman about it.

Q. Are you able to tell what you told him?

A. I know I asked him if he was at the meeting on Saturday night.

Q. Were those the exact words?

A. I asked him if he had been at the meeting—

Q. You mean by that to answer Yes, those are the exact words?

A. Yes, I remember that, yes.

Q. Will you swear they are the exact words?

Objected to. We submit the witness has answered.

The Court: I think you have covered that now.

Q. When did you first talk to Dr. Gates?

A. It was a couple of days afterwards.

Q. Do you know when and where it was?

A. Yes, I do.

Q. Now, when was it?

A. It was on the street in Kenyon, on the Sunday following the speech.

Q. This speech was on Saturday evening, wasn't it?

A. Yes.

Q. And the day following, Sunday, you spoke to Dr. Gates?

A. Yes.

Q. Where did you speak to him?

A. On the street in Kenyon.

44 Q. Are you able to tell the jury what you said to Dr. Gates?

A. I did not say much to him—

Q. Answer my question?

A. Yes, sir.

Q. State what you did say to Dr. Gates?

Objected to as immaterial; too far remote.

Objection sustained.

Exception.

Q. You are the writer of Editorials for the paper known as the Kenyon Leader?

A. Yes.

Q. Did you ever make any comment in the Leader with reference to this meeting?

A. I gave a report of the meeting, yes.

Q. Have you got that report with you?

A. No, I have not.

Q. Can you state what that report was?

A. I think I can substantially.

Q. Can you accurately and distinctly?

A. No; I can't give it word for word, that would be impossible.

Q. Did you make any complaint to any officer of this County about it?

Objected to, as wholly immaterial.

Objection sustained.

Exception noted.

Q. Did you appear before the Grand Jury of this County in October, 1917?

A. No, sir.

Q. You knew, as a practicing lawyer of this County there 45 was a meeting of the Grand Jury in October, didn't you?

Objected to as immaterial.

Objection sustained.

Exception noted.

Q. Are you able to tell whether it was Mr. Randall or Mr. Gilbert that spoke that evening with reference to the conscription of wealth?

A. Well, Mr. Gilbert spoke——

Q. Answer my question, Yes, or no.

A. Yes.

Q. Who spoke with reference to the conscription of wealth?

A. Both.

Q. Was it stated that it was a doctrine of the Nonpartisan League the conscription of wealth? To conscript the wealth of the country?

A. You mean, whether anyone said that it was?

Q. Yes. Was it stated by either Mr. Randall or by the defendant Gilbert it was the doctrine of the Nonpartisan League to conscript the wealth of this country?

A. He did not say anything about whether it was its doctrine or not.

Q. He did not say that?

A. No.

Q. Are you sure of that?

A. Yes.

Q. Do you know whether it is the doctrine of the Nonpartisan League?

46 Objected to; no foundation laid; this witness knows nothing about that.

Objection sustained.

Q. What were the words that Gilbert used, if you can tell, with reference to the conscription of wealth?

A. One thing he said was, "If the wealth were conscripted like we conscripted men the war would not last forty-eight hours."

Q. What else, along that line, did he say?

A. He said we had a right to talk about repealing bad laws; that the conscription law was a bad law and that it should be repealed.

Q. What else did he say about conscription?

A. He might have mentioned something more about it; yes.

Q. Did he use the words "Agricultural democracy, industrial democracy, economical democracy?"

Objected to as having been gone over.

The Court: I don't recall it was asked specifically.

The Court: He may answer.

A. "Industrial" is the word he used, as I caught it.

Q. In connection with industry—he spoke about the combination of farmers in an agricultural way?

A. Yes.

Q. For their economic improvement?

A. Yes, along those lines.

Q. Are you able to give the words he used?

47 A. Yes, substantially.

Objected to, been gone over.

Q. Can you do it exactly?

A. I will not undertake to say I can give every word or syllable.

Q. Then you mean to say you can't give it exactly?

A. I can substantially, so, yes.

Q. Will you kindly not dodge my questions but answer my question? Can you state it exactly? Answer that yes, or no.

Objected to.

The Court: The witness may answer.

Q. Can you give the words exactly?

A. Yes.

Q. State them exactly?

A. With reference to what?

Q. To what I have been asking you about.

A. Let me get that again, what it is?

Q. What he said along the lines of Industrial combination of farmers?

A. He said that "it is one of the purposes of the Nonpartisan League to organize the producers of wealth industrially; that we hear much about political democracy these days but it is just as necessary and more necessary to have industrial democracy."

Q. Is that all you can remember he said along those lines?

A. Practically; he spoke about that, "it was necessary for you"—he says, "you"—"should own everything that goes to produce and handle crops and grain and stock from the time it was produced until the time when it came back to the consumer;

cut out the middleman; they are mere parasites and you are paying for it."

Q. You stated that before, substantially?

A. Yes.

Q. You say you have not the files of the Kenyon Leader here?

A. Not here; I have them at home.

Q. I show you Exhibit 1. Was the Editorial based on the statements you made in this book?

A. Partly; it was not an editorial; it was a write up of the—

Q. Would you be able to get a copy of your editorial before you leave the Court House here?

A. I don't know where I could get it except from home; I can get it, if I can't get it over here, from home.

Q. Are you a member of the Goodhue Agricultural Society?

A. No, sir.

Q. Or of the Goodhue County Fair?

A. No.

The Court here took a short recess.

After recess Court resumed.

(The witness resumed the stand.)

By Mr. Wilson:

Q. Sometime during the time that Mr. Gilbert was making his speech someone, you say, asked the question, "What is the matter with Wilson?"

A. Yes.

Q. Who was that person, if you know?

49 A. I don't know.

Q. What reply, did you say, the defendant made?

A. "I don't know what's the matter with him; do you?"

Q. Was that all that he said?

A. Yes, in reply to that.

Q. Are those the words of his speech accurately stated or as you remember?

A. Accurately stated as I remember them.

Q. Did he not say, "The President is all right and the Government is all right?"

A. No, sir.

Q. He did not say that?

A. He did not say that.

Q. Did he not say that the Nonpartisan League in its resolutions in North Dakota, upon which Congressman Baer was elected, said, "We stand for our country, right or wrong, as against any foreign government with whom we are engaged in war," or words to that effect?

A. No, sir, he did not say that or words to that effect.

Q. He did not?

A. He did not.

Q. Will you state at what time and place he did not state publicly in these words, "We believe"—meaning the Nonpartisan League—"we believe that — it is right and necessary to conscribe men, it is equally right to conscribe the material resources necessary in order to conduct the war. It takes men and material to fight wars, let us then mobilize the entire forces of the national industries and men and by so doing bring the greatest possible force to bear on the situation and the chances are the war will not last very long." Did you hear him say that or that in substance?

A. I should say not; he did not say that or that in substance or any other way.

Q. Did you hear him then say—referring to the Nonpartisan League—"We believe that patriotism demands service of all according to their capacity," or words to that effect?

A. He did not say that or words to that effect.

Q. Did he say these words or words to this effect, "This organization stands for mobilizing men and material for the winning of the war?"

A. He did not say that.

Q. Do you remember of him saying these words, "You farmers can best aid in the prosecution of the war by organizing or mobilizing your forces." Or words to that effect?

A. No, he did not say that.

Q. You say that he said he had a right or claimed a right to advocate the repeal of a bad law?

A. Yes, he said that.

Q. Now, you say that at the time you heard the words, "Let's throw the whole outfit into the river?"

A. Yes.

Q. Who stated that?

51 A. I don't know; it was someone in the crowd there.

Q. At that time about how many persons were about the stand?

A. Well, there were not as many as there were at the beginning.

Q. Answer my question, if you can? About how many?

A. There were at least one hundred and fifty people.

Q. And of that one hundred and fifty people you are not able to tell who it was that used the expression, "Let's throw the whole outfit into the river?"

A. I could not tell who it was; it came from the north side of the stand where the crowd was the thickest.

Q. Will you swear that it was not Mr. Randall who used the expression, "Have you had anything to say who should be President; have you had anything to say who should be governor; have you had anything to say as to whether we should get into war" or words to that effect?

A. Mr. Gilbert stated it as I have given it. Mr. Randall, you say?

Q. That is the question I asked you.

A. Mr. Randall may have said something about the President—

Q. Will you swear it was not Randall that used these words?

A. These words I have given here?

52 Q. The words I just asked you?
A. Yes, sir.

Paper marked Exhibit 2 for identification.

Mr. Wilson: I offer in evidence Exhibit 2, being an Indictment brought against Mr. Martin, in connection with the cross examination of this witness.

Objected to as incompetent, irrelevant, immaterial.
Objection sustained.
Exception.

Q. You were here in the city yesterday?
A. Yes.
Q. You were here at the Court House?
A. Yes, sir.
Q. Did you converse with someone out here on the porch last evening?
A. I might have conversed with somebody on the porch.

Q. Did you in a conversation state, "We would get these yellow dogs?"

Objected to, no foundation laid; I insist the foundation be laid first.

Q. Did you say, "That we would get these yellow dogs if we have to stay in Court for a year, etc.," or words to that effect?
A. I did not or words to that effect.
Q. Did anybody out here in front of the Court room?
A. I heard something about a yellow dog story out there if you want to know it.
Q. That is all.

53 Redirect examination.

By Mr. Mohn:

Q. Mr. Gilbert spoke in the English language as he talked?
A. Yes.
Q. Did you know anything about this Nonpartisan League before this meeting?

Objected to as immaterial and not proper rebuttal.

The Court: Do you just want to ask that question, Mr. Mohn?

Mr. Mohn: Yes.

The Court: I will permit counsel to ask that question.

Exception noted.

A. No, not at that time.
Q. Mr. Finstuen, calling your attention to this book, Exhibit 1, I notice that you have drawn some lines across there. When did you do that?

A. At the time I wrote the article up for the paper I referred to these notes and when I was through with the notes I crossed them off, as I always do when I write them up.

Q. You did not put down everything you heard in the speech, as I understand it?

Objected to.

A. No; that is, all I put down is given here.

54 GILBERT A. FLOM, being first duly sworn, testified as follows:

Examined by Mr. Mohn:

Q. Where do you live?

A. Kenyon, Minnesota.

Q. How old are you?

A. Forty-four.

Q. What is your business?

A. Banking.

Q. Where?

A. At Kenyon, Minnesota.

Q. In this County?

A. Yes.

Q. How long have you been in Minnesota?

A. I am born in Goodhue County; been here all my life with the exception of four or five years.

Q. Were you at the meeting held at the Village of Kenyon in this County on the evening of August 18th, 1917?

A. Yes, sir.

Q. Do you know the defendant, Mr. Gilbert?

A. I know him when I see him.

Q. Did you see him at that meeting that night?

A. Yes.

Q. About what time in the evening did that meeting begin?

A. I imagine it began about eight o'clock—half past eight, something like that.

Q. Do you know how many people were present at that meeting, about?

55 A. I should judge from one hundred and fifty to two hundred people.

Q. Can you name some of the persons that were present?

A. Yes, I can. Dr. Gates, Charlie Lindholm, Albert Hillstad, Andrew Finstuen was on the platform with him, and John Wallager and Thomas J. Tassa, and John A. Bradley was there at one time—

Q. When Mr. Gilbert spoke?

A. Yes.

Q. Where was Mr. Gilbert when he spoke?

A. They have a Band Stand over there that they haul down the street, it is on a wagon and he was on that stand when he spoke.

Q. Where was the crowd?

A. Right on the sidewalk, some on the other side; all round.

Q. How close around the stand?

A. Probably within seven or eight feet some of them; some of them were on the sidewalk a little further off.

Q. Do you remember anything that Mr. Gilbert said to these people at that time?

A. Yes.

Q. Tell the Court and jury what you remember.

A. Well, he started in by saying that Randall, who had preceded him, had covered the ground pretty thoroughly and that naturally there was not so very much to say in connection with it. He 56 spoke something about industrial democracy, said it was just as necessary as political democracy. Then he got down to where he said, "They say we are going over to Europe to make the world safe for democracy. I tell you we better make America safe for democracy first." Then he says, "You say, what is the matter with our democracy? I will tell you what is the matter with it. Have you had anything to say about who should be President; have you had anything to say about who should be Governor of your State? Have you had anything to say about why we should get into this war or not? You know you have not." That is one of the statements he made there. Then he says, "If this is such a great democracy, for Heaven's sake why should not we vote on the conscription of men? We were stampeded into this war by newspaper rot to pull English chestnuts out of the fire. If they would conscript wealth the way they have conscripted men this war would not last over forty-eight hours. The only way to end this war is to urge upon Congress the conscription of wealth." Those were some of the statements he made there.

Q. Do you remember anything else?

A. Then he said, "You may say this is sedition but if this is sedition make the most of it."

Q. What occurred then, if anything?

A. He said something about the President or something that riled the crowd and they told him he should shut up. John Wallager 57 told him he should shut up, and others said that you are giving a pro-German speech and so on. One fellow said, "Let's take the whole wagon down the street." It got so noisy that finally he had to quit.

Cross-examination.

By Mr. Wilson:

Q. How old are you?

A. Forty-four today.

Q. This is your birthday?

A. This is my birthday I guess, I did not think of it until now.

Q. And you are a banker?

A. Yes.

Q. Actively engaged in banking?

A. Yes.

Q. And not a politician?

A. Not much politician; no.

Q. Who went with you to that meeting?

A. I don't know as anybody went with me——

Q. How far were you from Mr. Gilbert?

A. About twenty feet possibly.

Q. What were you doing there?

A. Well, most of the time I was sitting there in the chair the little boy has there for shining shoes; I remember he shined my shoes while I was sitting there taking it in.

Q. Was the shoe shining chair up against the building?

A. Sitting right in front of Brugge's hotel and restaurant.

Q. Right up against the building?

58 A. Yes.

Q. The sidewalk there is about ten or twelve feet wide?

A. I should judge about ten possibly.

Q. And the sidewalk in front of the speakers' stand was filled with people standing up, wasn't it?

A. Oh, yes.

Q. And people rustling about, going to and from?

A. Oh, yes.

Q. And talking, were they not?

A. Why, yes; some, of course.

Q. Now, on the band stand were how many persons?

A. Finstuen, Randall, Gilbert, M. tin and Bradley, as far as I remember those were the only men; then there were some ladies there I did not know.

Q. How many?

A. There were two elderly ladies and some children—one or two children; I don't remember how many.

Q. Would you say there were as many as ten or eight present on that platform?

A. I should say about nine; I think two ladies, some children and these five men.

Q. You would say nine?

A. I think about nine.

Q. Are you sure there were nine?

A. There may have been eight, or may have been ten, I don't remember.

59 Q. Who acted as the Chairman of the meeting?

A. Finstuen, I should imagine, he was the one that introduced the speakers.

Q. What speaker did he introduce first?

A. I think he introduced Mr. Martin first and he made a few remarks—I know that Mr. Randall was the first regular speaker of the evening.

Q. I am asking your personal knowledge?

A. Well, about these things I did not pay very much attention——

Q. Are you able to state what Mr. Finstuen stated when he introduced Mr. Martin?

A. He said something about these people are organizing the farmers here now and they have come here to speak and I would like to have you hear what they have got to say in regard to these matters—he understood it was a farmers' organization and that it might be of benefit to the farmers as well as business men to hear what they had to say about it.

Q. Are you stating your recollection or his words?

A. That is as near as I recall it.

Q. You don't mean to say those are the words Mr. Finstuen used?

A. I could not state exactly the words he used that night.

Q. The first speaker then was Martin?

A. The first regular speaker was Mr. Randall.

Q. Is it not true that Mr. Martin only made some introductory statements that they had two speakers there that would address the meeting and state what the objects and purposes of the Nonpartisan League were, or words to that effect?

A. Yes, I think he did.

Q. That is about as you remember the special remarks that were made by Martin?

A. Yes.

Q. Then Mr. Randall was introduced and made the principal speech of the evening, didn't he?

A. Well, he spoke, I think, the longest time of any of the speakers.

Q. Made the principal speech, in length, of the evening?

A. Yes.

Q. Are you able to give the first words that Mr. Randall used?

A. Not exactly the first words. He was telling about the organization of the farmers in North Dakota and one thing and another in regard to that, but where I became the most interested——

Q. No! No! No! What did Randall say?

A. He was telling about the organizing in North Dakota; telling something about the farmers out there and some incidents connected with the League; his experience in organizing in North Dakota and one thing and another.

Q. Are you giving Mr. Randall's words or your recollection of what he said?

A. That is my recollection of it.

Q. At that time did Mr. Randall say anything about the war?

61 A. Yes, sir.

Q. When?

A. In his speech, of course.

Q. Which speech; first or last speech?

A. Principally the first one.

Q. Principally the first one?

A. Yes.

Q. How long did he talk?

A. I should judge he talked half an hour or a little more.

Q. During the time he was talking this half hour were you sitting there having your shoes shined?

A. I was not having my shoes shined all the time.

Q. After you got them shined did you sit there in that chair or go out of there?

A. I sat quite a little while until there was another fellow came and said, "Well, I would like to get my shoes shined"; then I got up—

Q. So you did not remain in that position all the time?

A. No.

Q. You moved while Randall was talking?

A. Yes, I believe it was while Randall was talking I moved.

Q. Did you move closer or further away?

A. I had to move closer, because I had been up against the wall before—I moved out to the rail at the outer edge of the sidewalk—we have some iron railings there where they tie horses, we were leaning up against those.

62 Q. And east of where the band stand was?

A. A little further south, between the building and the bench—

Q. Finstuen introduced the defendant?

A. Yes, I am quite sure he did.

Q. You know that he did?

A. Yes, he did.

Q. Are you able to state what he said when he introduced Mr. Gilbert?

A. I don't remember so much what he said in introducing Gilbert it was only a few words he said.

Q. You mean to say now you are unable to state to this jury the words that Finstuen used when he introduced Mr. Gilbert?

A. I did not have to pay much attention to anybody—

Q. Answer my question?

A. That is my answer; I did not pay much attention to anybody introducing anybody—

Q. You are not able to give the words?

A. I could not give the words.

Q. Please answer my question. Now, what were the first words, if you knew, that Gilbert used?

A. I was saying that in my direct examination he said that Mr. Randall had covered it pretty thoroughly and there was not so very much to say in connection with it.

Q. Are those the identical words he did say?

A. As near as I can remember.

63 Q. Do you not mean to say that that is your recollection and not the exact words he used?

A. I could not say they were the exact words but the substance.

Q. It was not as he said it, word for word, was it?

A. No, I don't imagine it was.

Q. Now, what were the next words he said, if you know.

A. It was just as necessary to have industrial democracy as it was to have political democracy. That was the substance of it.

Q. Are those the exact words he used?

A. Yes, they are.

Q. "It is as necessary to have industrial democracy as it is to have political democracy?"

A. Yes.

Q. What further did he say?

A. Then he said, "They say we are going over to Europe to make the world safe for democracy."

Q. That was about the opening of his speech?

A. Yes.

Q. Did you put this down anywhere?

A. No, I did not.

Q. Do you mean to tell this jury that after nearly nine months, and your not making any memorandum, you are giving the exact words that Mr. Gilbert used to the crowd there on the night of the 18th of August, 1917, in the Village of Kenyon?

A. Yes, I do.

Q. Word for word?

64 A. Yes.

Q. Do you remember any other conversation you had there with any person there that night?

A. Oh, yes.

Q. With whom did you have a conversation?

A. I had a conversation with Ole Watson.

Q. Tell us the words you used to Ole?

A. He said, "What do you think about this speech?" I said, "I think it is rotten."

Q. What further?

A. That is about all that we said about it.

Q. Did you talk with any other person?

A. I talked with Tom Tassa.

Q. Are you able to give the words you used to Tom Tassa?

A. Did not make very many words—he said, "Good evening." I said, "Good evening."

Q. Are you able to give the words you used to Tom Tassa?

A. Yes.

Q. What words did you use to him?

A. I said to him, "What do you think about this speech?" He said, "I think we ought to pull this wagon down the street." That is what he said.

Q. Did you talk with anybody else?

A. Oh, yes. With lots of them; so many that it would be hard to remember all of them. I talked with Isaac Emerson after the speech was over—

Q. Are you able to give the words you used?

65 A. Not word for word, that every Tom, Dick and Harry had talked.

Q. Are you able to state all the persons you spoke to that night?

A. No.

Q. Are you able to state what you said to the several persons you spoke to that night?

A. Oh, no; I should say not.

Q. Who is the first one you spoke to after this meeting with reference to the meeting?

A. The first one I spoke to afterward was Isaac Emerson; he is a farmer down there.

Q. When was that?

A. The same evening.

Q. Did you hear Mr. Randall say that evening anything about, "Have you had anything to say as to who should be President?"

A. No.

Q. Did you hear him say, "Have you had anything to say about who should be Governor?"

A. No, sir.

Q. Did you hear him say anything about the holding of meetings for the purpose of designating, among the farmers, about electing President or Governor or anybody else?

A. No; I did not.

Q. You are sure of that, are you?

A. I am sure.

Q. Will you swear he did not?

A. Yes; he did not say anything about that.

The Court: Do you mean Mr. Randall?

Mr. Wilson: Yes.

Q. Now, after you say that this was said, "They say we are going over to Europe to make the world safe for democracy," You heard him say that?

A. Yes, I did.

Q. "But, I tell you, we had better make America safe for democracy first."

A. Yes, I heard that.

Q. In that connection did he say anything about President Wilson?

A. Then he said, "You say what is the matter with our democracy? I will tell you what is the matter with it."

Q. Oh, no!

A. Then he came to what he said about the President and the Governor.

Q. That does not answer my question. I asked you if he said anything about President Wilson?

A. Yes.

Q. Did he use these words. "In the language of President Wilson we are going over to Europe to make the world safe for democracy?"

A. No, sir, he did not say that.

Q. What did he say?

A. He said, "They say we are going over to Europe to make the world safe for democracy. I tell you we had better make America safe for democracy first. You say, 'What is the matter with our democracy; I will tell you what is the matter with it. Have you had anything to say as to who should be President? Have you had any-

67 thing to say about who should be Governor or have you had anything to say about why we should go into this war or not? You know you have not. If this is such a great democracy,

for Heaven's sake, why should not we have a conscription of men?" And he said, "We have been stampeded into this war by newspaper rot to pull English chestnuts out of the fire for her; if they would conscript wealth the way they have conscripted men this war would not last over forty-eight hours."

Q. Don't you know the words you have given now are the exact words of this Indictment?

A. I am talking about Gilbert now; those are the words he said. I don't know anything about your Indictment; I am stating the words Gilbert said.

Q. You appeared before the Grand Jury, didn't you?

A. No, sir, I have not.

Q. Have you talked with anybody about what occurred there—about that talk?

A. I have talked with Mr. Mohn about it.

Q. Anybody else?

A. I think I talked with Andrew Finstuen about it—many times—we started in right away to talk about it right after the speech.

Q. You and he started in right away to talk about it and have kept it up right along so you have memorized every word?

A. Pretty well, because they were very vital to me.

Q. And you have talked to strangers about it, haven't you?

68 A. I think so, different times.

Q. And you and Finstuen have repeated the same words substantially that you have just now said?

A. We have, many times.

Q. Many times, so you have fixed it in your mind?

A. Yes, I have fixed that pretty well in my mind.

Q. And these words were given just exactly as you have stated, in the order in which you have stated them?

A. Pretty nearly so; there might have been a few other little words between but this is the main portion.

Q. Do you know if there were any words in between?

A. Well, I would not swear to that; no.

Q. Then you are not able to say those were the exact words?

A. Those are the principal words he said.

Q. No! No! No!

A. I do not think there were any words in between these but I would not say that positively.

Q. Do you know that Mr. Gilbert here spoke of President Wilson?

A. He spoke of him at different times during the evening; he did not say his name in this connection.

Q. Will you answer my question and stop your observations in reference to it—You say he did speak of President Wilson?

69 A. During the evening, yes.

Q. What did he say about President Wilson, if you know?

A. I have got to lead to it in order to tell.

The Court: Let us not get excited. I suppose the witness is not an experienced witness and does not grasp the meaning of counsel

and does not know exactly what the purpose of these preliminary questions is.

Q. Did you hear this defendant say anything about President Wilson; he says he did—Now I ask you the simple question: What did he say, if you know, about President Wilson?

A. This was of such a nature I can't tell it without explaining how it came about.

Q. I don't want that.

A. Then I can't tell it; that is all there is to that. I can't tell it unless I can explain how it came about; what he said about Wilson.

The Court: Give the sentence in which Mr. Gilbert spoke of President Wilson, if in any sentence he did so.

A. He said, "I don't know what is the matter with Wilson. Do you?"

Q. Now, someone put to Mr. Gilbert the query or question, "What is the matter with Wilson," or "what is the matter with President Wilson?"

A. Yes.

Q. His answer to that question was, "I don't know what is the matter with him. Do you?"

A. Yes, sir.

Q. Do you know who that person was that asked that
70 question?

A. Yes.

Q. Who?

A. Charlie Lindholm.

Q. Now, did he say anything further with reference to President Wilson?

A. Not that I can remember.

Q. Not that you can remember. Now do you remember of someone saying something about that was against the Government or "you are talking against the Government?"

A. Yes.

Q. Who was that?

A. Charlie Lindholm.

Q. Do you remember the defendant then said, "Come up here and tell why I am talking against the Government," or words to that effect?

A. I know he did not say he should come up there—

Q. Did he say then, "Tell why I am talking against the Government?"

A. I can't remember him saying that. No, I don't think he said that. He did not say that.

Q. Do you mean he did not say it or you did not hear him say it?

A. I can't remember him saying that.

Q. Mr. Flom, do you remember it was talked too, about the election of a Congressman in North Dakota?

A. I don't remember him speaking about that.

71 Q. You don't remember it was told about what the Non-partisan League had done in North Dakota?

A. He spoke a good deal about that.

Q. Do you remember he talked about the grading of wheat and what it had saved the farmers in North Dakota.

A. No, I don't remember that.

Q. Or the dockage of the elevators, how it had robbed the farmers of North Dakota, or words to that effect?

A. No.

Q. Was there anything said about conserving the forces, industrial forces by way of the Government taking charge of the transportation lines and taking charge of the mills and ammunition factories—

A. Yes, there was something said about that. That was Randall that spoke that.

Q. Are you able to give the words with reference to that?

A. Not entirely, no.

Q. Who said it?

A. Randall spoke of that.

Q. Did Mr. Gilbert say anything on that?

A. No; I don't remember him speaking on that.

Q. Now, you said someone said: "You're making a pro-German speech." Who said that?

A. Charlie Lindholm said that.

Q. You remember the answer he made to that?

A. Yes, I do.

Q. What answer did he make?

72 A. He said, "Ha! Ha! Ha!—an Englishman make a pro-German speech."

Q. Is that all he said?

A. That was the principal answer—I don't remember—

Q. Is that all you remember that he said?

A. About that; yes.

Q. I am talking about that—nothing else. Now, do you remember anything further then with reference to the incident of Lindholm saying that is a pro-German speech and his answer, "Ha! Ha! Ha! an Englishman make a pro-German speech?"

A. That is all the words.

Q. After he said he was a Canadian he turned round and said he was an Englishman?

A. Well, he said that. Those are just the words he used. That is what he said.

Q. Now, you say there was an expression to haul the wagon down the street?

A. Yes.

Q. Who used that expression?

A. Tom Tassa.

Q. To whom did he use it?

A. Well, to the crowd in a general way, "Let's take and haul them down the street."

Q. After that did Mr. Gilbert make any reply?

A. After that it got pretty noitsy around there and I quit—

Q. After that did Mr. Gilbert say anything?

A. Not to that; no.

73 Q. That was Mr. Wallager, I think you said, that said something out there—

A. Wallager, he said he should shut up talking against the Government.

Q. Now, when Mr. Wallager said that to him did Mr. Gilbert say anything?

A. Mr. Wallager, "Shut up," he said, "Why should I shut up?" "You are talking against the Government, talking against my Government," that is what Wallager said, and after that I don't remember that Gilbert made any reply to that.

Q. About that time there was considerable commotion, wasn't there?

A. Yes.

Q. And then didn't Mr. Randall go up there and take him—

Objected to as immaterial.

Objection sustained.

Q. Do you remember he spoke about their meeting and combining and urging Congress to conscribe the wealth of this country for the purpose of aiding in the vigorous prosecution of the war?

A. No, sir.

Q. After Mr. Gilbert got through did Mr. Martin speak?

A. Yes, Martin was the last one that spoke; but Randall spoke after Gilbert, then Martin.

Q. The first person that spoke at that meeting was Martin?

A. Yes, sir.

Q. The next person was Randall?

74 A. Yes.

Q. The next person that spoke was Gilbert?

A. Yes.

Q. The next person after Gilbert was Martin again?

A. Yes.

Q. The next person after Randall was Martin?

A. Yes.

Q. So that the whole time occupied by the several speakers, beginning at 8 o'clock, finished at what hour?

A. I could not say just what hour it finished, I did not pay any attention to it.

Q. About how long?

A. I should say, all told, about an hour and a half or three-quarters.

Q. An hour and a half?

A. Yes.

Q. And that whole hour and a half you gave your undivided attention to each one of the speakers?

A. I was there all the time; yes, sir.

Q. You gave your attention to each one of them to know what they were talking about.

A. Yes, pretty well.

Q. You went there for the purpose of ascertaining what they had to say with reference to the Nonpartisan League, didn't you?

A. Well, the organization of farmers principally, yes.

75 Q. So you paid close attention to what was said to ascertain what they meant to support?

A. Oh, yes; certainly.

Q. Now, are you able to state what Mr. Martin last said to that crowd?

A. Yes, pretty well.

Q. What did he say?

A. He said they were going to get a League organization there and they would have to be either for or against it——

Q. For or against the League?

A. They would have to be either for or against it; there is no middle way.

Q. There was no middle of the road, as they used to call it?

A. No.

Q. They had got to be either for him or against him—"if you don't gather you scatter?" Is that right?

A. That is what he said.

Q. Did Mr. Martin say anything about the war?

A. I don't think he said anything himself about the war; no.

Q. I am asking you now, whether or not the defendant here in his remarks used these words or these words in substance—speaking about the elections in North Dakota, speaking as to what the League had accomplished in North Dakota, and speaking of the resolutions gotten up by the League upon which John M. Baer was elected to

Congress, at a meeting prior to the election of Congressman 76 Baer for North Dakota, quoting as the platform upon which he was elected to Congress, "We,—meaning the Nonpartisan League—stand for our country right or wrong as against foreign governments with whom we are engaged in war?"

A. No; he did not say that.

Q. And you say he did not say this, "In the words of President Wilson we are going to make the world safe for democracy?"

A. No, sir; he did not say it that way.

Q. And speaking with reference to war and speaking with reference to the vigorous prosecution of the war, the means to use for the vigorous prosecution of the war, he used these words, "We believe that — it is right and necessary to conscript men, it is only right to conscript the material resources necessary to continue the war; it takes men and material to fight war, let's then mobilize the entire forces of the nation, industries and men, and by so doing bring the greatest possible force to bear on the situation and the chances are the war will not last very long." Did he say those words or those words in substance?

A. No; not in those words.

Q. Do you remember of his saying any words like that or similar to that?

A. He said that we should urge upon Congress the conscription of wealth.

Q. You remember that, don't you?

A. I remember that.

Q. Now, do you remember him saying this, as one of the tenets of the Nonpartisan League in relation to Governmental ownership, "Why should we not have Government ownership or government owned flour mills and packing plants and steel mills and munition factories, coal mines and transportation facilities?" Or words to that effect?

A. Not in those words.

Q. To that effect?

A. No.

Q. That was the idea he was carrying out. That the Government should own the flouring mills and packing plants and steel mills and ammunition factories and coal mines and all that sort of thing?

A. I don't remember him mentioning all these things; he mentioned packing plants.

Q. You did hear him when he did mention packing plants?

A. Yes.

Q. Do you remember of him speaking of the coal mines?

A. No.

Q. And the conditions of the country or scarcity of coal and the accumulation of wealth in the pockets of the mine owners?

A. I don't remember that.

Q. Or words to that effect?

A. No, I do not.

Q. Did he say that all these things should be under Government control so that all these eventually could be used to win this war and to win it speedily?

78 A. No, sir; He did not say that.

Q. Or words to that effect?

A. No, he did not.

Q. Do you remember his saying words like this, "We—referring to the Nonpartisan League—believe patriotism demands service of all according to their capacity?"

A. No, I don't remember that.

Q. Or did he say these words or words like these. "This organization stands for mobilization of men and material for the winning of the war?"

A. No, sir.

Q. Did he say these words or words like these? "The way for the farmers to do is to organize, consolidate and co-operate with the forces in raising the crops, and in the handling of crops so that the war can be won in the shortest space of time," or words to that effect?

A. No, sir.

The Court here took an adjournment until 2 P. M.

2 P. M. Court resumed.

(The witness resumed the stand).

By Mr. Wilson: Tell the jury if there were any lights on that band stand?

A. I know that stand is equipped with lights; I can't remember whether they were on that night or not; I don't hardly think there were any lights on the stand that evening.

79 Redirect examination.

By Mr. Mohn:

Q. Was there any arc light there?

A. Yes; there is a big arc light near there, sufficient lights for speaking.

Q. About how high above the top of the sidewalk was the floor of the band stand?

A. The floor I should judge would be about four and a half feet above the ground.

Q. Then the chair in which you were sitting up against the wall, as you testified to, do you know how high that is from the sidewalk?

A. Well, it is a box, a little platform, then there is a common chair on top of that again.

By Mr. Wilson:

Q. You say there was an arc light there, that arc light is at the intersection of Main Street and the street west there?

A. No, there is an arc light right across the street.

Q. The arc light hangs from the center of the street?

A. No; it is a big post along the sidewalk.

Q. Is it one of those incandescent lights?

A. No; it is a big light, same as all these latest lights have.

Q. About how far from the band stand was it?

A. Almost directly across the street from it.

Q. About how many feet?

A. The street is about ninety feet between the sidewalks, 80 I think it is possibly about one hundred or one hundred and ten feet.

Q. About how high above surface of the street was the arc light?

A. The post must be about possibly sixteen feet.

Q. Did you ever notice that immediately below or underneath a big arc light there is a very strong shadow?

A. No, I don't know as to that.

Q. You never noticed that?

A. No, I did not notice it.

Dr. JOSEPH A. GATES, being first duly sworn, testified as follows:

Examined by Mr. Mohn:

Q. What is your full name?

A. Joseph A. Gates.

Q. Where do you live?

A. Kenyon, Minnesota.

Q. What is your profession?

A. Physician and surgeon.

Q. You have been such how long?

A. Since June, 1895.

Q. How long have you been practicing in this County?

A. Since June, 1895.

Q. Were you in the village of Kenyon on the evening of August 18th, 1917?

A. Yes, sir.

Q. Were you in the crowd that heard Mr. Gilbert speak there that night?

A. Yes.

Q. Do you remember what he said?

A. I think so.

Q. Will you tell the Court and jury what you heard him say?

A. Why, the first speaker was Mr. Randall—

Mr. Wilson: I submit the question should be answered as it was put.

Q. Tell the Court and jury what Mr. Gilbert said?

A. He went on to say that inasmuch as Mr. Randall, the first speaker had outlined the purposes of the League, and he approved of that, there was not a great deal along that line to be said. Then he says, "We are going over to Europe to make that safe for democracy, but, I tell you, we had better make America safe for democracy first. You say, What is the matter with our democracy? I will tell you what is the matter with it. Have you ever had anything to say about who should be our President? Have you ever had anything to say about who should be Governor of this State? Have you ever had anything to say about whether we should go into this war or not? You know you have not. We were stampeded into this war by newspaper rot, to pull England's chestnuts out of the fire for her. If you should conscript the wealth as you conscripted men this war would not last forty-eight hours. The best way to end this war is to urge

82 Congress to conscript wealth as well as men." Of course there was—these remarks caused considerable disturbance—

Objected to and move that last be stricken out.

The Court: It will be stricken out.

Q. Do you remember anything else that he said?

A. Yes—in answer to—

Objected to.

Q. What else did you hear him say there, Doctor?

A. He was asked a question—

Objected to —

Q. Did you hear him say anything about our democracy?

Objected to, suggestive and leading.

The Court: It is suggestive. Objection sustained.

Q. Did you hear him say anything else there, Doctor?

A. He said that, "If this is such a great democracy why should not we vote upon the conscription of men, if this is such a great democracy."

Mr. Nordlin: We move that be stricken out as no part of the substantive charge under this Indictment.

The Court: I think this is part of what he has already testified.

Q. Did you hear any conversation between Mr. Gilbert and anyone in the crowd?

A. Yes.

Q. When was that with reference to the time the speech was made?

A. It was right along at the last end of his speech.

Q. Do you know with whom Mr. Gilbert conversed?

A. Yes.

Q. Who?

A. There was Charlie Lindholm and John Walleger and myself.

Q. State what occurred?

Objected to, that part, that conclusion, what occurred; no objection to what was said.

The Court: I take it counsel meant what further was said in this conversation. This question is limited to what was said and I will direct the witness now to state what was said there.

Q. Go on and state.

A. I think it was Charlie Lindholm said along about that time, I will not be certain whether it was him or not, at any rate it was said from the crowd, "What's the matter with Wilson?" He leans over he says, "I don't know. Do you?" Then some more questions, I says to him, "You ought to deliver that speech in New Ulm instead of Kenyon."

Mr. Nordlin: We move to strike out what he said. What the witness said.

(Motion withdrawn).

(The Witness.) Then Charlie Lindholm proposed three cheers for Wilson and we gave them from the crowd. Then there was some more of them when he restarted in to talk, told him to shut up, that he was talking sedition and he said he was not. Of course there was considerable agitation around there at that time —

Mr. Nordlin: We move that last be stricken out.

The Court: Stricken out.

Q. Did you hear anything else said there at that time?

A. Yes, he spoke about—

Q. I mean between Gilbert and someone in the crowd there. Do you recall anything else said there?

A. I don't know as I can recall anything definite.

Q. Who was there in the audience when Mr. Gilbert made this speech?

A. There was John Wallaker, Andrew Finstuen, he was on the stand most of the time, Gilbert Flom, Albert Hillstad, Charlie Johnson, Tom Tessa and O. F. Kenkel and many others.

Q. Was there more than one meeting at Kenyon last August at which Mr. Gilbert spoke?

A. No, sir.

Cross-examination.

By Mr. Wilson:

Q. What evening was this that you say you heard this defendant speak in Kenyon?

A. Saturday evening, I think.

Q. Do you know whether it was Saturday evening or not?

85 A. Yes, I know.

Q. What day of the month was it?

A. That I could not tell you.

Q. What time did you go to the meeting?

A. I could not tell you that.

Q. Who went with you?

A. No one; oh, yes; my wife was along. I drove up there in the car.

Q. Did you get out of your car?

A. I did, yes.

Q. Were you out of your car while the defendant was speaking?

A. Yes.

Q. Where were you at the time he was speaking?

A. I was on the sidewalk.

Q. How near to where the defendant was speaking?

A. About twenty or thirty feet.

Q. Were there any persons around you?

A. Lots of them.

Q. Who were they?

A. I could not tell you that—all of them—the moving crowd was back and forth.

Q. Then you are not able to tell me who was about you at the time the defendant was speaking and you stood there on the sidewalk?

A. I could tell you some of them, I think.

Q. Can you tell me all of them?

A. No, sir.

Q. Were the people on the sidewalk moving to and fro while the defendant was speaking?

86 A. There was a passage way back in the sidewalk where they were moving back and forth but I stood in the front.

Q. So there were people moving back and forth on the sidewalk during the time the defendant was speaking?

A. Yes.

Q. About how many people were over on the south side of the band stand in the street that is known as the Main Street, I believe?

A. The crowd varied; sometimes there was more than others—at the close of the speech there was more than there was at other times.

Q. There were people in the street as well as vehicles and automobiles?

A. Yes.

Q. So that the Main Street on the south side of the band stand was pretty well filled up with spectators, teams and automobiles?

A. Yes.

Q. Pretty near the whole street?

A. There was room for passage.

Q. The street practically was filled up with a lot of people?

A. Yes.

Q. How many would you say in number?

A. I should think around two or three hundred.

Q. How thickly were they together on the sidewalk in front of the band stand?

A. Quite thick.

Q. Was there anyone talking and laughing during the 87 time or were they paying close attention?

A. Sometimes paying close attention, sometimes they were not.

Q. You mean by that, when they were not paying attention they were laughing and talking and moving about?

A. I did not pay much attention to that; I was listening to the speech.

Q. How long a time do you think you stayed there on the sidewalk near the band stand?

A. I was there, around in that vicinity an hour or more altogether.

Q. Were you talking with other people?

A. Occasionally.

Q. Do you know who you talked to?

A. Tom Tassa.

Q. Do you remember what you said to him?

A. Yes.

Q. Can you give me the exact words you used to Tom Tassa?

A. I think I could tell about what I said.

Q. Can you tell me just what you said?

A. I think so. He says, "Let's take them down in the Creek." I says, "No, let's not do that—

Q. When did you say that?

A. During his speech.

Q. Then you were quite angry?

A. Yes, I was angry, you bet.

Q. Now, did you speak to anybody else?

88 A. Why, I may have said something, I don't remember but this one thing I do remember.

Q. Do you remember now of speaking to anyone else?

A. I don't remember what I said to anybody else.

Q. Can you name to me any other person you spoke to there at that time on the sidewalk?

A. Yes.

Q. Who?

A. Charlie Lehman.

Q. Can you tell me what you said to him?

A. No, I can't give you the exact words I said to him.

Q. Do you remember anybody else you spoke to there?

A. No; I don't remember of having any conversation with anybody else during the speech.

Q. Do you remember of speaking to the defendant?

A. Yes, sure I do.

Q. When did you speak to the defendant?

A. After he had made these statements.

Q. When, with reference to the time he commenced?

Objected to.

Q. When did he make these statements then with reference to the time when he commenced?

A. At the close of his address.

Q. Are you sure now that these statements you have testified to were made at the close of his address?

89 A. They were made all through it; one part of it was not much better than any other.

Mr. Nordlin. We move that be stricken out as a conclusion.

The Court: That last may be stricken out.

Q. Now tell me on your oath you first heard the words you have stated that he gave here, "We are going into this war or we are going over to Europe," or words to that effect? Now, when?

A. I heard it during the address.

Q. When, with reference to the time he commenced? At the beginning, middle or the end?

A. It was not at the beginning.

Q. Was it in the middle?

A. It must have been between the beginning and the end.

Q. Do you mean to tell me you can't tell when it was with reference to the time he commenced his address that he used the words you say he used?

A. I told you the first thing he said was about explaining about—

Q. I am not asking you that.

A. If you won't give me a chance I can't answer it—

Q. State in the exact language, so far as you know, every single thing that this defendant said when he was on the stand stand—

A. I have told you.

Q. Tell the time and give me the exact words as used?

A. It is on record here, is not it?

90 Q. Doctor, in the direct examination, in answer to questions of my friend Mr. Mohn, you started out to state what Mr. Gilbert said when he opened his address, with reference to what Mr. Randall had said. Now, I want you, if you can, to tell this jury the language this defendant used when he commenced his address? Just what he said.

A. He said that Randall had explained to the people the objects and the ideas on the Nonpartisan League and it was not necessary for him to go into that. Then he went on to tell—

Q. Now, when you have stated that have you given his words *as near as you can remember* them?

A. Yes.

Q. Do you mean to tell me you have given his words exactly?

A. No, I do not say that.

Q. Can you tell me now what he said further?

A. He says, "We are going over to Europe to make the world safe for democracy—

Q. Was that immediately following what you have just stated he said about Randall making his speech?

A. There may have been something between.

Q. Was or was there not any something in between?

A. I am trying to tell you.

Q. I am asking you the question, was there or was there not something in between the time when you say he explained about Mr. Randall and the time he commenced to say, "We are going over to Europe to make the world safe for democracy?"

A. There might have been something but it did not impress me.

Q. Was there something?

A. I can't say whether there ~~was or was not~~.

Q. That answers the question. Now, you say, he said, "We are going over to Europe to make the world safe for democracy?"

A. Yes.

Q. Now, what is the next sentence he used after that expression?

A. "I tell you we better make America safe for democracy first."

Q. Now, after he said that what was the next thing he said?

A. There might have been something else between the things that I have said.

Q. So that you mean to tell this jury that between the language you have given in this Indictment in the sentence—there might have been or might not have been other connecting words?

A. No, I am not trying to tell you that.

Q. Was or was there not between the sentence you have given here that you stated, any connecting words or sentence?

A. I don't think there was.

Q. Do you know whether there was or not?

A. To the best of my recollection there was not.

92 Q. Is that absolute knowledge or simple recollection?

A. It is the knowledge of anyone who would be listening to the speech.

Q. Did you make any memorandum of that speech?

A. I did not need to.

Mr. Nordlin. We move that answer be stricken out.

The Court: It may be stricken out.

Q. Did you make any memorandum of that speech?

A. No, not with a lead pencil.

Q. Did you make a memorandum with anything on God's earth of that speech?

A. Yes, in my brain?

Q. In your brain?

A. You bet.

Q. And you have had it in your brain ever since?

A. Yes.

Q. I suppose it burned itself into your brain?

A. It is there permanently.

Q. Go with you to the grave?

A. I expect it will.

Q. Now, after that meeting did you talk with anybody since about it?

A. Yes.

Q. Whom?

A. Well, I talked with my wife; and I don't just remember exactly who else; I know we were gathered around there and talked some; just exactly who with I don't remember.

Q. Can you tell me what you said to each one of them?

A. I said it was a very seditions speech.

Q. Are these the words you used?

A. I may have called it "Treason."

Q. Did you or did you not?

A. I did.

Q. You called it treason?

A. You bet.

Q. Now, who did you call it treason to?

A. Everybody I spoke to.

Q. Will you tell me the name of every person you spoke to calling that speech treason?

A. I have made speeches over there and spoke to audiences I can tell you about.

Q. I don't care about that. Can you give me the name of every person you spoke to in regard to that speech, calling that speech treason?

A. I spoke to a man, George Bradley, next day—

Q. Anybody else?

A. To Hans Brugge.

Q. Can you tell me just what you told Hans Brugge?

A. I don't know; I could not repeat the exact words—

Q. I don't care. If you can't repeat the exact words. Now after that, on the following Sunday or the following Monday—I
94 don't care which; can you give me the names of any persons you told about what the speech was?

A. I think I talked with a good many of them—

Q. Are you able to give me the names of the first persons you spoke to on Sunday about that speech?

A. No.

Q. Or the first person you spoke to on Monday about that speech?

A. No, I can't tell you that.

Q. Are you able to tell me the name of the first person you spoke to in which you gave the same language that you have testified to was used by this defendant?

A. I presume it was the first person I spoke to.

Q. Who?

A. I could not tell you; I think it was my wife—

Q. Now, Doctor, was it during the time that this defendant was speaking that you interrupted him while you were there on the sidewalk?

A. Yes, it was while he was speaking there.

Q. Did he at that time invite you to come up on the platform and show wherein he had said anything that was seditious or treasonable or against the Government or words to that effect?

A. I think they extended an invitation to anybody; I think it was Mr. Randall that did that.

Q. I am not asking about Randall; I am asking about this defendant?

A. No, he did not.

95 Q. Did you interrupt this defendant?

A. Yes.

Q. Didn't he say, I am making this speech here; what is the matter with it, or words to that effect?

A. No, sir.

Q. Did you at that time after he answered you say—

A. He did not answer me.

Q. Did you hear that said?

A. Yes, sir.

Q. Did you hear him then say in answer to that, come up here and show me wherein that speech is seditious or show whether it is against the Government or words to that effect?

A. No, sir.

Q. Now, you tried to make some trouble that night, Doctor, didn't you?

A. No, sir.

Q. Didn't you say something about putting him up on the lamps or something of that kind?

A. No, sir.

Q. What did you say with reference to that?

A. I told him; all I said to him is, "You ought to have made that speech in New Ulm instead of Kenyon." That was said during

the conversation that was being held between different members of the crowd and the speaker.

Q. While the defendant was speaking were you walking around or did you stand where you stood, as you have stated?

A. I was standing where I said I stood.

96 Q. And did not move around?

A. No; I did not move around.

Q. You never had any trouble with this defendant?

A. No, sir; never saw him till he came there that night.

Q. And never saw him after that until you saw him here in Court?

A. No, sir, I don't think I have.

Q. While Mr. Gilbert was talking or making the speech there did different people heckle him or did he go right along?

A. He went right along until this started; there was no interruption until this started.

Q. About how long had he talked before the questioning began?

A. Fifteen or ten minutes probably.

Q. So that he was fifteen or ten minutes before he reached the expressions you said he used?

A. No, I would not say that; that is all of them; they kept getting worse.

Mr. Nordlin: We move that be stricken out as a conclusion.

The Court: It may be stricken.

Q. Will you swear there was not twenty minutes elapsed from the time he began until he used the language you say he used, that is contained in this Indictment here? Will you swear to this jury there was not twenty minutes elapsed from the time he began his speech until he began to use the words, "We are going over to Europe to make the world safe for democracy?"

97 A. No; there was not twenty minutes elapsed between the time from the time he started to the time he made this statement, because I don't think he talked twenty minutes in all.

Q. How much time, would you say elapsed?

A. I can't tell you; I was not holding watch on him; I was not holding anything on him.

Q. Did you talk with Andrew Finstuen about this?

A. Yes.

Q. When?

A. I think it was on Sunday.

Q. From that time until this how many times have you talked with Andrew Finstuen about it?

A. Oh, a lot of times.

Q. How many times would you say?

A. I could not tell you but a lot of times.

Q. In these conversations you had with Andrew Finstuen have you repeated substantially the language you repeated here?

A. Many times, yes.

Q. So that the many times you have repeated it to him you have fixed it in your memory?

A. It did not need fixing; it was fixed that night.

Q. You have fixed it in your memory?

A. It was fixed that night.

Q. Will you swear it was not fixed by repeating it?

A. Yes; I thought of it if that is repeating it.

Q. You have discussed that with Finstuen quite a number of times?

98 A. I have talked it over with Mr. Finstuen.

Q. And he has repeated the same words to you, hasn't he?

A. We have talked about the case.

Q. Has he repeated the same words to you many times?

A. No, he has not.

Q. Has he talked?

A. He may have.

Q. Has he or has he not?

A. I think I have heard him say substantially the same thing.

Q. How many times have you heard him say substantially the same thing?

A. I don't know.

Q. You have talked, too, to Mr. Flom about it, haven't you?

A. Yes.

Q. You and he have repeated substantially that same language that is in this Indictment?

A. We have not rehearsed anything.

Q. Have you and Mr. Flom talked over substantially the same language you have testified to here?

A. Certainly.

Q. Has he used the same language you used?

A. Yes.

Q. How many times have you and he talked it over together?

A. I don't know.

Q. How many times would you think?

99 A. I could not tell you; we talked about it quite often; it has been talked a good deal over there in that country.

Q. Do you remember what Mr. Finstuen said at the time he introduced either of these speakers?

A. I did not pay much attention to it; no.

Q. So you are unable to give anything of what Finstuen said?

A. Yes, I am not able to repeat what he said because I did not pay any attention to it.

Q. Can you give me anything that Martin said at the first of that meeting?

A. Yes, he said he was very fortunate in having two officials of the League there to explain the objects of the League—in his introductory remarks,—quite fortunate in having them there.

Q. Was that the main thing he said?

A. Yes; in his introduction; yes.

Q. Then he gave way for Mr. Finstuen?

A. I think so, yes.

Q. Now, you remember of his introducing Mr. Finstuen as the Chairman of the meeting?

A. I was not very near there at that time; I was in the car with my wife back some little distance; I did not hear very much of what was said there about that.

Q. Did you hear Mr. Randall commence his address?

A. No; I don't think I heard him just when he started; he was just getting up there when I came up.

Q. When you do remember of his speaking, do you remember that he was extolling what the Non-partisan party had done in North Dakota?

A. Yes.

Q. And that they had succeeded in electing John M. Baer for Congress?

A. I don't think he said anything about John M. Baer for Congress. No, sir; he did not mention that; he said that they had elected the Governor and—

Q. Randall, I am talking about.

A. Yes.

Q. Do you remember, in speaking of the Non-partisan League and what they had done in North Dakota—I am speaking of Randall—when he spoke about controlling the machinery of the State, when he said that they had elected from the Governor down to the Path-master?

A. Yes, clean sweep.

Q. The whole shooting match?

A. Yes.

Q. You remember he was talking about taking over the mills and taking over the factories and so forth?

A. Yes.

Q. And so helping towards carrying on the war?

A. No; did not say about the war—“Trying to get rid of the middleman so there should be no loop-hole between consumer and producer.

Q. At the time that Randall talked there did he say anything except speaking about what the doctrine and the things that the 101 League had accomplished in North Dakota?

A. Repeat that question, please?

Q. Did Mr. Randall, in his speech, say anything except to extoll, laud, what the Nonpartisan League had done in North Dakota and to explain what their doctrine was with reference to public ownership of utilities and owning of the mills, factories, mines and so forth?

A. Yes.

Q. That was his first talk?

A. He said something besides that.

Q. That was along the line of explaining about utilities?

A. He spoke about what they had accomplished; what their purposes were; what they had carried out.

Q. At that time did Mr. Randall say anything about the war? The war now going on, known as the World's War?

A. Yes.

Q. In his first talk that he had?

A. Yes.

Q. How long did Mr. Randall talk?

A. I think half an hour or three-quarters.

Q. Immediately after his talk Mr. Finstuen introduced Mr. Gilbert, didn't he?

A. Yes.

Q. Do you remember that he said that he spoke of the fact of the organization or party electing a Congressman in North Dakota upon a platform like this: "We, the men of the Nonpartisan 102 League stand for our country, right or wrong, as against foreign governments with whom we are engaged in the war?"

A. No, sir.

Q. He did not make any such expressions or words like that?

A. No, sir.

Q. Now, did he use these words or words in substance, "In the words of President Wilson we are fighting to make the world safe for democracy?"

A. He did not say that.

Q. He did not say that. Now, did he speak of the economical problems; the material resources of the country, in mines and mills and factories, in ammunition plants and all that sort of thing. Did he talk about that?

A. I don't remember him talking about mines or anything like that or anything of that kind; he talked about packing plants.

Q. Ammunition plants?

A. I don't remember ammunition—

Q. Do you remember him talking about coal mines?

A. No.

Q. Do you remember if he said anything about the farmers of North Dakota having suffered by bad grading of wheat?

A. I think it was Randall who talked that way.

Q. Do you remember him saying anything about dockage of wheat?

A. No; I think Randall did.

103 Q. Do you know he did?

A. Yes, I know he did.

Q. Do you remember Gilbert using words like this, that we,—the Nonpartisan League—"we believe that — it is right and necessary to conscript men, it is equally right to conscript the material resources necessary to continue the war?"

A. No, he did not say that.

Q. Or words to that effect?

A. No; he said, if we conscript men you have a right to conscript wealth or should conscript wealth.

Q. Didn't he say, "It takes men and material to fight wars?"

A. No.

Q. Didn't he say then, "Let's mobilize the entire forces, industries and men, and by so doing bring the greatest possible force to bear upon the situation and the chances are the war will not last very long?" Or words to that effect?

A. No, sir.

Q. Now, do you remember of his speaking about strength; the agricultural and industrial strength that came by combination, co-operation and consolidation, all these big interests, towards the material health and strength of this government?

A. No, sir.

Q. Do you remember his saying, in that connection, we—meaning the Nonpartisan League—"We believe that patriotism demands service of all according to their capacity?"

104 A. No, sir.

Q. Or words like that?

A. No, sir.

Q. Or in substance?

A. No, sir.

Q. Do you remember of his using these words, "This organization"—meaning the Non-partisan League—"stands for mobilizing men and materials for the winning of the war." Or words to that effect?

A. No, sir.

Q. Now, Doctor, you have stated in answer to Mr. Mohn's question, outside of what you have stated as charged in the Indictment,—what further things do you now know that Mr. Gilbert said there at that time and place outside of what you have given in the answer, "We are going over to Europe, etc., " and finishing with the words the "war would not last forty-eight hours." What additional words did he use, if you know?

A. He said, "I understand they are sending over a load of coffins and send our boys back in them."

Q. Sending coffins?

A. Yes.

Q. Are those the words he used?

A. They are the words.

Q. What other words did he use?

A. I don't know as I remember any of them.

Q. Are you able to give any other words?

A. Not just now.

105 Q. You have had some trouble, haven't you, with some members of the Nonpartisan League out there at Kenyon?

A. I had a little argument with Mr. Martin.

Q. Your argument was you forcibly ejected him out of a shop, didn't you?

A. I put him out; yes.

Q. And for that you have been sued in a law-suit, haven't you?

Objected to as immaterial, incompetent.

Mr. Wilson: To show the witness is prejudiced against Mr. Gilbert, as being a part of this—

The Court: I think it would not show that necessarily.

Mr. Wilson: Well, I will offer it.

Mr. Mohn: Objected to as immaterial and incompetent.

Objection sustained.
Exception noted.

Q. Now I will put the general question: you don't feel very kindly to this defendant, do you?

A. No.

Q. Did you ever say to anyone, if so, when and whom, this, "If there be another Nonpartisan meeting held in Goodhue, Minnesota, the blow will fall," or words to that effect?

Objected to, no foundation laid.

Q. Did you ever have a conversation with anyone with reference to that?

A. No, sir.

Q. At no time?

A. No.

Mr. Mohn: I ask that the question and answer be stricken 106 out as incompetent and immaterial, no foundation laid.

(Stricken out by consent).

Q. You are a member of the Goodhue County Agricultural Society, are you not?

A. Yes, I was; I don't know whether I am in good standing or not; I don't know whether I paid my dues this last year or not.

Objected to as immaterial.

Q. You knew Mr. Gilbert spoke over there to the County Fair?

A. Yes, I heard about it.

Q. Were you there?

A. No.

Q. You have taken some considerable active part out there as a politician in Kenyon, haven't you?

Objected to as immaterial.

Objection sustained.

Q. You have been a candidate for the Legislature and elected to the Legislature from Kenyon?

A. Yes, sir.

Q. Been a candidate for Lieutenant-Governor on the Republican ticket?

Objected to as incompetent.

The Court: I think it is immaterial.

Mr. Wilson: I wish to show that the Doctor, as an active Republican has had and announced hatred to this Nonpartisan League, that is the purpose of the question.

By Mr. Nordlin:

107 Q. You have been a candidate for the Lieutenant-Governorship?

A. Yes.

Q. And a member of the local Republican Organization a good many years?

A. Yes.

Q. Always identified with the Republican Party?

A. Yes, proud of it.

By Mr. Wilson:

Q. You don't like the Nonpartisan League?

A. I have nothing against the Nonpartisan League.

Q. You have not?

A. No, sir.

Q. Have you done any work out there to prevent meetings of the Nonpartisan League? In Kenyon or about Kenyon?

A. No, sir; not unless held by these men; there has been three men I object to.

Q. Didn't you drive Breidall out of town, mentioned as an organizer of the Nonpartisan League?

A. We drove him out—proud of it, too. Yes.

Mr. Wilson: I move to strike that out; not responsive to my question.

The Court: The last part of the answer may be stricken out.

By Mr. Mohn:

Q. What did you drive him out for?

Objected to.

Objection overruled.

108 A. Because when he was asked by citizens of our town—

Mr. Nordlin: Objected to; hearsay, incompetent; not in the presence of the defendant, not binding upon the defendant—it may prejudice his interest in this case.

A. Because he was telling us about North Dakota and we thought he ought to be up there raising a crop for the Government, but, he says, "It does not look so very good, I think there would be more money in this business—

Mr. Wilson: Now, I move to strike that out as incompetent, irrelevant and immaterial; hearsay and prejudicial to the defendant and not made in the presence of the defendant?

Mr. Mohn: It may be stricken out.

JOHN WOLLACKER, being first duly sworn, testified as follows:

Examined by Mr. Mohn:

Q. What is your full name?

A. John Wollacker.

Q. Where do you live?

A. Town of Kenyon.

Q. What is your business?

A. Farming.

Q. Are you engaged in farming now?

A. Sure.

Q. How long have you been engaged in farming?

A. Between twenty and twenty-five years.

109 Q. In this County?

A. In this County.

Q. Were you in the Village of Kenyon, in this County, on the evening of August 18th, 1917?

A. Yes, sir.

Q. Did you see the defendant, Joseph Gilbert?

A. Yes.

Q. At that time?

A. Yes, sir.

Q. Did you hear him make a speech?

A. Yes.

Q. On the band stand?

A. On the band stand on Main Street in Kenyon.

Q. About how many people were there at this meeting when Gilbert spoke?

A. Six or seven, I think—seven or eight on the stand.

Q. I mean, how many in the audience?

A. Oh, quite an audience.

Q. Can you name anybody who was in the audience?

A. Yes, Dr. Gates; Charlie Lohman, and all my neighbors were there and Finstuen was there—he was on the stand—

Q. Andrew Finstuen?

A. Yes.

Q. John H. Bradley there?

A. No; not as I can remember.

Q. You don't remember.

110 A. No; I don't remember that; no, he was not there.

Q. Do you know whether or not Albert Hillstad was there?

Objected to as leading and suggestive.

Q. You are living in the Village of Kenyon now?

A. No; I am living in the township of Kenyon.

Q. Do you remember any part of the speech that Gilbert delivered?

A. Oh, I remember some of it; of course I did not pay attention to the first part of it; of course I stood there and spoke with some of the people, then Gilbert commenced speaking.

Q. Will you tell the Court and these gentlemen what you remember of Mr. Gilbert's speech?

A. He says, when I pay attention to it—"We had to go over to Europe, he says, for to make the world safe for democracy, but, I tell you, he says, it is a better way to make safe for democracy here, he says—and you will ask what is the matter with our democracy and I will tell you what is the matter with it, he says, have you had anything to do or to say that should show by the Presi-

dent; have you had anything to say that who should be the Governor of this State; have you had anything to say that we should get into this war or not—certainly—certainly you ain't, he says, if this war is for us should not we then vote on conscription of men? You know, he says, that we were stampeded into this war by news-paper not for to get England's chestnuts out this fire for her. I tell you, he says, the best way to end in this war is to call on Congress to vote to conscript wealth." That is the way I got it and then I got hot and then I told him to shut up——

Objected to anything the witness said after he got through saying what Mr. Gilbert said, as not responsive.

The Court: It is not responsive.

Q. Then what took place?

A. Then I told him—I got hot, I told him to shut up; of course there was such a big noise there in the audience—I told him to shut up. He says, "Did you tell me to shut up?" Yes, I says, when he should talk about the government it is better, says I——

Q. What else took place?

A. I heard some of them say——

Objected to, not what you heard somebody else say.

Q. Did you hear anybody else say anything to Gilbert?

A. Yes, as I say——

Objected to.

Objection overruled.

Exception.

A. They said load them down the river; load them down the street, somebody say and so forth——

Mr. Nordlin: I move that be stricken out, not responsive.

Motion denied.

Exception.

112 Q. Do you remember anything else that occurred there?

A. Yes, later on I do—of course I got a boy—that is in the first draft——

Mr. Wilson: I move the witness be confined to the question he is asked and that this statement be stricken out.

Q. You have a boy in the first draft?

A. Yes.

Q. What is his name?

A. John Wollacker.

Objected to as wholly immaterial.

Q. Was he at this meeting?

A. Yes, he was there at the meeting?

Q. When Mr. Gilbert spoke?

A. Yes.

Cross-examination.

By Mr. Wilson:

Q. How old are you?

A. I am fifty-five years old.

Q. You have lived in this County how many years?

A. I have lived here about thirty-four years.

Q. Are you a citizen of the United States?

A. Yes.

Q. Born in the United States?

A. No.

Q. Born in Norway?

A. Yes.

Q. Came to this country when?

113 A. In 1881.

Q. And were naturalized when?

A. I think it is, I can't recollect, I think twenty-three or twenty-four years ago.

Q. About how old were you when you came to this country?

A. I was seventeen; in the eighteenth year, I think.

Q. And when you came here you went out to live where you now live in Kenyon?

A. Yes, but, of course, Kenyon was not there; in the township of Holden I came to.

Q. Are you living in the township of Holden now?

A. No; it is eleven years since I live in the township of Kenyon where I bought my farm.

Q. About how far from the village?

A. Two and a half miles to the east, about.

Q. Usually you speak in the Norwegian language mostly, do you?

A. Yes, that is the leading language.

Q. When you are at home and happy with your family you speak your native language? Native tongue?

A. Yes.

Q. You never were schooled in the English language?

A. Oh, yes.

Q. So that you read and write English, do you?

A. Yes.

114 Q. Now, you went to this Nonpartisan meeting in Kenyon sometime in August?

A. Yes.

Q. To hear what they had to say?

A. No.

Q. What did you go there for?

A. It was Saturday night — I did not know anything about there might be a meeting —

Q. You were in Kenyon Saturday evening?

A. Yes.

Q. You learned there was going to be a Nonpartisan speech, did you?

A. I did not know anything of that before I got into Kenyon.

Q. When you were in Kenyon you heard there was a meeting by the Nonpartisan League; you went to see what kind of stuff that was?

A. Yes.

Q. You wanted to see what kind of animals they had?

A. Oh, sure.

Q. Did you see the band wagon up there?

A. Yes.

Q. And there were some people up there in the band wagon?

A. Oh, yes.

Q. And Mr. Finstuen was up there acting as Chairman?

A. I did not know what he was but I saw him up there.

Q. Did you see him introduce Mr. Gilbert?

115 A. No; I was not there at the very start; he had started when I came there.

Q. When you came there Gilbert was talking?

A. No.

Q. Who was talking when you first came there?

A. Randall was talking.

Q. About how long did he talk after you came there?

A. I should judge at least three-quarters of an hour.

Q. After you came there?

A. Yes, I should judge that.

Q. About how near the stand were you at the time Randall was talking?

A. I stood there just between the wagon and the railing, the band wagon.

Q. This rail you speak of is the iron rail that is along the sidewalk where the farmers coming in hitch their horses?

A. Yes.

Q. And that railing ran along the sidewalk from the band stand either way?

A. Yes.

Q. About how far do you think you were from the band stand along the sidewalk?

A. Well, I should think ten or twelve feet from the band wagon.

Q. While you stood there you were on the sidewalk?

A. No, I was out on the street just outside the railing.

116 Q. Now, there were a good many people around you?

A. Oh, yes; quite a pile of them, quite an audience.

Q. And were they walking about and talking?

A. Oh, yes.

Q. Some little noise and confusion?

A. Oh, yes.

Q. Now, are you able to tell the jury the first words that you heard Mr. Randall say?

A. Randall use?

Q. Yes.

A. Yes, I think I can.

Q. Please state.

A. He says, "That rot we are getting pulled off nowadays is something that is disgraceful," he says, "The rot that the government is getting pulled off nowadays"—I think it was something like the lot of course—it was something disgraceful, he says—that is what is started in with, after I got there, but he had spoke before I came there.

Q. Are you giving the exact words he used?

A. I would not be positive; I think that is about the word.

Q. That is your best recollection now?

A. Yes.

Q. Now, can you give the next thing he said?

A. I can't remember—I can't recall that.

Q. Now, let me see if I can refresh your recollection, Mr. Winkler. Mr. Randall was speaking about the Nonpartisan League and about what it had done in North Dakota, was not he?

A. Yes.

Q. And he spoke about how it had cleaned up or cleared up everybody and elected their governor—everybody clear down to the path-master?

A. Yes, he said.—I would not say he said that, but before, he said he would rather be there representing three hundred thousand farmers than be President of the United States—

Q. That they had a membership of three hundred thousand farmers?

A. He did not say where—but he was there representing—but he did not say where—

Q. He was representing three hundred thousand farmers and he would rather do that than be President of the United States?

A. Yes, that is what he said.

Q. Do you remember of his talking anything about the mills and factories and so forth? What they had done?

A. Yes, I think he was speaking about that—

Q. Do you remember that he was talking about political organization and farmers' organization and he said the other men had organized and the industries should combine and do away with the middle man, something of that kind? Do you remember that?

A. No, I can't remember that.

Q. He was explaining what the Nonpartisan League was by telling the farmers that if they would join it they would have the more milk and honey conditions down here in Goodhue County?

A. Yes, I think he did say that or something like that anyway.

Q. And he talked about three-quarters of an hour?

A. After I got there, I think—it may have been longer but I know it was that long.

Q. Will you state to me as near as you can remember all that Mr. Randall said at that time?

A. Yes; I guess I can—of course they slip out of my mind; I can't remember any more at present.

Q. There has been a lot he said that has slipped out of your mind?
 A. Oh, my! He spoke fast, I tell you.

Q. After he got through talking somebody introduced Mr. Gilbert?
 A. That was Randall himself.

Q. Introduced Gilbert?

A. Yes.

Q. Just a minute. Are you sure it was not Mr. Finstuen, Andrew Finstuen? Andrew was Chairman of the meeting.

A. I stood there and talked with some of the people around there but, I believe, Mr. Finstuen had left the platform before he got through.

Q. You have not any recollection?

A. Not straight.

Q. But your remembrance is that Gilbert was introduced by Mr. Randall?

A. Yes.

119 Q. In all, about how much time did Mr. Gilbert take in his talk?

A. Oh, twenty minutes or half an hour.

Q. Twenty minutes to half an hour?

A. Not over half an hour.

Q. You think it was limited between twenty minutes and half an hour?

A. Say not to exceed half an hour; I think it was not above half an hour.

Q. He did not go beyond half an hour?

A. No, because we stopped him.

Q. Can you tell me the first thing that Gilbert said?

A. No, not the first thing; the first I got of him just about the same thing I stated here.

Q. You have stated to the jury, if I understand you correctly, everything that you now remember of hearing Gilbert say that evening? Is that correct?

A. Well, that part of it I listened to, yes.

Q. You have told this jury here everything that you now remember that Mr. Gilbert said while he was talking there in the bandstand?

A. Yes.

Q. You did not make any minutes of it, did you?

A. No, I did not.

Q. You did not write it down?

A. No.

Q. You do not mean to tell this jury you have given it just in the order in which the words were used by him, do you?

120 A. Oh, they might have some odd words in amongst them.

Q. But they are, just about as you can remember?

A. Yes.

Q. As near as your memory now fixes it they were the words he used?

A. Yes.

Q. Did you mean to tell the jury there might have been some words or sentences in between that you don't now remember?

A. No, I did not do that.

Q. You did not do that, because there has been too much time gone by?

A. Oh, no.

Q. There has been nearly nine months?

A. Yes.

Q. After you heard it did you talk it over with anybody?

A. I talked it over with some, not with a good many.

Q. Can you tell me who?

A. Ole Wachlund was one; he asked me——

Objected to what was said as hearsay.

Q. I am testing your memory; I simply wanted to know—do you remember anyone else you spoke to that evening.

A. Yes.

Q. Whom?

A. John Asse.

Q. Who else?

121 A. I can't remember, I spoke with someone in the town and George Scholberg I spoke with.

Q. Anybody else?

A. It got pretty late then so that we hiked off home; I may have spoken to some more, I don't remember.

Q. While Gilbert was speaking twilight had gone into darkness?

A. No.

Q. About what time was he speaking in the evening?

A. Gilbert?

Q. Yes.

A. I should judge about half past nine and around ten o'clock.

Q. Half past nine and ten o'clock?

A. Yes.

Q. Well, the sun had gone down and it was getting——

A. Oh, yes; but we had an electric light there.

Q. There was an electric light in the street?

A. Yes, and an electric light in the band wagon too, if I am not wrong.

Q. Are you sure there was a light in the band wagon?

A. It used to be——

Q. Do you know that it was there was that night?

122 A. Yes, it was there from the start unless they stopped it out—I know it was from the start.

Q. You think there was a light?

A. Yes, small lights; they had them hanging all around.

Q. Did you see any ladies upon the bench there?

A. Yes.

Q. How many?

A. There was two that I am sure; I think there were two or three but two sure.

Q. May have been more?

A. There was not over three but I am not certain whether it was two or three, I did not pay attention enough.

Q. Now, while Mr. Gilbert was speaking you say you got mad?

A. Yes, I did.

Q. You told him to shut up?

A. Yes.

Q. What words did you use?

A. "Shut up," I said.

Q. Did he make any reply?

A. Yes.

Q. What did he say?

A. "Did you tell me to shut up?" "Yes, I did," says I, "when you are talking against the government."

Q. What did he say to that?

A. Well, I considered he would stir the people when he said, "The great democracy, for Heaven's sake"—that is what I thought was against the government, that is against the government.

Q. You considered it to be?

A. Yes.

Q. Then what did he say?

A. He says, "Did you tell me to shut up," I says, "Sure 123 I did." Says I, "When you are using that language."

Q. Then what was said by him?

A. No more; the crowd got so noisy he had to quit.

Q. That was the last of it?

A. Yes.

Q. They were going to tear the band wagon down?

A. Oh, no, no, no.

Q. But they did talk about putting him in the river?

A. Yes, I heard it out in the audience—heard them boys—

Q. There was considerable excitement out there following this and some talk about hanging him up to the tree or putting him in the river, something of that kind?

A. "Haul him down to the river." They did not say, "Into the river," but "To the river."

Q. Did you hear any other threats—anyone want to do him any harm?

A. Some of them was talking of taking him down the street, gettting him out of town.

Q. Quite a turmoil?

A. A little bit—

Q. Was Dr. Gates one of the leaders?

A. No; I don't think he was one of the leaders.

Q. Was he among them?

A. Yes, he was among them.

Q. After Mr. Gilbert got through talking someone else spoke?

A. The last Martin got up and spoke a few words.

124 Q. That was after Mr. Gilbert sat down?

A. Yes.

Q. Do you remember whether Mr. Finstuen introduced Mr. Martin the last time?

A. I know he did not.

Q. I will ask you if you talked this over with Mr. Flom and Dr. Gates?

A. Yes.

Q. How many times do you think you have talked it over?

A. It can't recollect.

Q. Quite a number of times?

A. Not so many times but I knew we have been talking that over.

Q. When you came back and talked it over would you meet Dr. Gates and Mr. Flom and Andrew Finstuen and talk it all over? Would you meet with Dr. Gates, Mr. Flom and Andrew Finstuen and others and talk this matter over?

A. Not before we came down here; I have talked the matter over a little bit since we came down here.

Q. To refresh your recollection?

A. Yes.

Q. Did each one of you talk it together?

A. Oh, yes.

Q. Now, Mr. Wollacker, do you remember of Mr. Gilbert saying, in speaking of the Nonpartisan League and what it had done in North Dakota, and whom they had succeeded in electing 125 to Congress, that he used these words or words like these: "We," meaning the Nonpartisan League, "stand for our country, right or wrong, as against foreign governments with whom we are engaged in war," or words to that effect?

A. I did not hear that.

Q. You did not hear it?

A. No.

Q. Do you remember him saying, "In the words of President Wilson we are fighting to make the world safe for democracy?"

A. He said this way, "We were going over to Europe——

Q. Do you remember hearing him speak of President Wilson at all that evening?

A. No, not Gilbert, I don't think.

Q. You don't think Gilbert did?

A. Not mention President Wilson but Randall did.

Q. Do you remember, when he was speaking, he spoke about the fact that men had been conscripted for the war and speaking about the right to conscribe the wealth, the money of the country that he said like this, "We believe — it is necessary to conscribe men it is only right to conscript the material resources necessary in conducting the war—it takes men and money to fight wars, let's then mobilize the entire forces of the nation, industries and men and by so doing bring the greatest possible force to bear on the situation and the chances are the war will not last very long." Do you remember of his saying something like that?

126 A. No, I do not.

Q. Do you remember when he was speaking, that he was talking about the packing plants, speaking about the railroads, speaking about the munition factories, speaking about the coal fields and so forth that he said, "We believe that patriotism demands service of

all according to capacity." Do you remember him saying something like that?

A. I don't remember he said that.

Q. Do you remember of his speaking about the different things I have been speaking about? any of them words, so far as I heard.

A. He was speaking about different things, but not that he spoke

Q. You don't mean to tell me, do you, that he did not talk about the mills and the mines and packing plants and so forth at that time, do you?

A. He might, but of course, I did not pay any attention to it—

Q. If he did say it you did not hear it?

A. Well, of course it is possible for him to say it and I not catch them, did not pay any attention to them.

Q. Now, do you remember that, speaking about the Nonpartisan League, that he said, "This organization, meaning the Nonpartisan League, this organization stands for mobilizing men and material for us to win the war?"

A. No, no.

Q. Do you remember of his saying "it would be well for the farmers to organize, consolidate and that by doing that they 127 would render a better and greater assistance to the war," or words to that effect?

A. He did not mention war in them words there. He mentioned a word like that but he did not mention "War."

Q. You don't catch my idea? Have you heard him say words something like that farmers ought to get together, ought to unite together and be united together, that they would be in better shape to carry on the war, than if they did not organize?

A. He did not mention war.

Q. Well, it would be better to help yourselves?

A. Yes, that is it.

Q. Did you at any time at Kenyon, after you heard this speech say like this—"I do not care for what Randall said, but the fellow, this fellow," meaning the defendant here, "this fellow made a good speech," or words to that effect?

A. No; I was complaining about both speeches.

Q. So that you did not say that to anybody?

A. I did not neither. I did not.

Mr. Mohn: I move that be stricken out as immaterial; no foundation laid.

(Stricken out by consent).

Q. You made a complaint in Justice Court, did not you, against these people?

A. Yes.

Q. You have not a very kindly feeling towards the Nonpartisan League, have you?

A. Well, if they let government alone—

128 Q. So you have not a very kind feeling for either the defendant or the League?

A. No.

Q. The reason why you have that feeling is because you think they are against the government?

A. Yes.

Q. That is the real truth, is not it?

A. That is true.

Q. And therefore you are against them?

A. Yes.

Paper marked for identification Exhibit 22.

Q. I show you Exhibit 2 and ask you if you signed this?

A. Yes, sir. That is my signature.

Q. This was filed with the Justice, Mr. Overhold?

A. Yes.

Q. Is that the old gentleman or the young man?

A. I always have been calling him Dr. Overhold.

Q. And this was made on the 11th day of January, 1918?

A. Yes.

Q. Do you remember what Mr. Martin said at this meeting?

A. Yes.

Q. What?

A. Martin spoke a very few words—he was announcing where they should meet the next week and he said they expected 129 they would have two other speakers.

Q. You have not stated everything, as you remember, that Martin said that evening?

A. Yes.

(The Court here took a short recess, and afterwards resumed, and the witness was again called to the stand.)

By Mr. Wilson:

(Paper marked for identification shown witness, Exhibit 3.)

Q. I show you Exhibit 3, and ask you, that is your signature, is it not?

A. That is my signature.

Q. And made before the same Dr. Overhold as the other one?

A. Yes.

Mr. Wilson: We offer Exhibit 3 in evidence as part of the cross-examination of the witness, the two complaints made by him before the Justice over there in the village of Kenyon, on the dates as appear on the face of them, being Exhibits 2 and 3.

Mr. Mohn: There is no objection as to the State of Minnesota against N. S. Randall but we object to the—

The Court: I will receive that one against the defendant Gilbert but not the other one. I don't think we ought to drift away from trying the case.

Mr. Wilson: I am frank to state there are three complaints made

130 by the witness; one against Gilbert, one against Martin and one against Randall, in each of which complaints before Dr. Overhold, the identically same language charged in this Indictment is set up in the complaint.

Mr. Mohn: I object to the complaints against Martin and Randall?

The Court: The objection to the other two complaints I will sustain; the first one against Gilbert I will overrule.

Exception for the defendant.

Mr. Wilson: So the objection goes to 2 and 3.

Mr. Mohn: Let the Randall complaint go in too, if you want to.

The Court: If the State has no objection the complaint against Randall may go in.

ALBERT HILLSTAD, being first duly sworn, testified as follows:

Examined by Mr. Mohn:

Q. What is your full name?

A. Albert Hillstad.

Q. How old are you?

A. Twenty-nine.

Q. What is your business?

A. Hardware.

Q. Where?

A. Kenyon.

Q. The Village of Kenyon in this County?

A. Yes.

Q. How long have you been in the hardware business?

131 A. A little over six years.

Q. Were you in the Village of Kenyon in this County on the 18th of August, 1917?

A. I was.

Q. Did you hear Mr. Joseph Gilbert make a speech from the band stand that night?

A. I did.

Q. On the main street of that village on the evening of that day?

A. Yes.

Q. Can you tell us the names of some of the persons that were in the crowd there that evening listening to the speech?

A. There was John Bradley, Dr. Gates, Thomas Tassa, and Charlie Lindholm and Gilbert Flom and Tom Wollacker and some others.

Q. How many persons were there in the crowd?

A. I should judge about, at the time that Mr. Gilbert spoke, probably about one hundred and fifty, in that neighborhood.

Q. Do you remember any part of Mr. Gilbert's speech?

A. Yes, I remember some parts of it.

Q. Tell what you remember?

A. When Mr. Gilbert started to speak he said that Mr. Randall had outlined the purposes of the League in pretty good shape; he did not have very many remarks to make. He said the Nonpartisan League was for the purpose of organizing the farmers and that it was as necessary for us these days to have industrial democracy as it was to have political democracy, and he said, "They tell us we are going to Europe to make the world safe for democracy, I tell you we had better make America safe for democracy first. You say, what is the matter with our democracy? I will tell you what is the matter with it. Have you had anything to say as to who should be President; have you had anything to say as to who should be Governor of your State; have you had anything to say as to whether or not we should get into this war? You know you have not; if this is such a great democracy, for Heaven's sake, why don't we vote on the conscription of men," and he said, "If they conscripted all wealth same as they have conscripted men the war would not last forty-eight hours. The best way to go to war is to urge upon Congress the conscription of wealth." He made the statement, "We were stampeded into the war by the rot—newspaper rot, to pull England's chestnuts out of the fire.

Q. Do you remember anything else he said?

A. Towards the end of his speech he said, "That they say this is sedition but if it is you make the most of it, I am telling you the truth." That is about the end of his speech. He was heckled about that time.

Q. Did you hear him say anything else?

A. I don't remember anything right now; I don't know as I remember anything.

Q. What occurred there at the time Gilbert was speaking?

133 Objected to.
Objection overruled.
Exception.

Q. Do you know whether or not anything occurred there between Mr. Gilbert and the members of the audience at the time Gilbert was speaking?

A. During the time he was speaking there was considerable talk among the crowd; a great many of them did not like the —

Mr. Wilson: I move that be stricken out as a conclusion of the witness.

The Court: The last part may be stricken out.

Q. Did you hear anybody in the crowd say anything to Mr. Gilbert?

Objected to as leading.

The Court: It is slightly but the witness may answer.

A. Yes; at the end of his speech they started heckling him; Lindholm told him he was making a pro-German speech and this

went on; he said that Gilbert was making seditious statements and that he had better stop, and, finally, somebody said, "What is the matter with Mr. Wilson?" Mr. Gilbert leaned over the edge of the band wagon and says, "I do not know. Do you? And Dr. Gates told him he had better go to New Ulm to make a speech like that because it was positively pro-German and several members of the crowd began suggesting they give three cheers for President

Wilson; then Randall jumped up and said, "Yes, we will 134 give three cheers for President Wilson," and they did,—the crowd, that is.

Q. Have you stated all that transpired while Gilbert was speaking?
A. That was all I remember of it.

Cross-examination.

By Mr. Wilson:

Q. How old did you say you were?

A. Twenty-nine.

Q. Born where?

A. Park River, North Dakota.

Q. Came to Kenyon when?

A. I was a year and a half old then.

Q. Have lived there since?

A. Not all the time; I was out West two or three years.

Q. What were you doing out West?

A. Part of the time I worked in a bank at Leonard; part of the time keeping time for the Great Northern Railroad Company.

Q. And you came back to Kenyon to go into the hardware business when?

A. I did not go into the hardware business right away; I worked in the garage for about a year, then went into the hardware store.

Q. And were at that meeting in Kenyon at the time the defendant spoke there?

A. Yes.

Q. That was when?

A. August 18th, 1917.

135 Q. What day of the week?

A. Saturday night.

Q. Do you keep your store open all Saturday?

A. We do.

Q. Saturday evening?

A. Yes.

Q. Had you closed your store?

A. No, sir.

Q. Then you had left your store and gone up to the meeting?

A. I left the store with my partner.

Q. You left the store about when?

A. I came down just as Randall started.

Q. You remained there how long?

A. I was there, I missed about five minutes or a little better than

five minutes of Randall's speech then I came back and was there until Randall finished his speech. His second speech.

Q. That was after Mr. Gilbert had finished?

Q. Where were you with reference to the platform?

A. I was standing in front of Hans Brugge's restaurant, between there and the drug store, near the railing.

Q. About east of the band stand?

A. I was not east of the band stand.

Q. What directions were you from the band stand?

A. I was right in front of the northwest corner of the band stand.

Q. Main Street runs east and west, does not it?

134 A. Yes.

Q. And this band stand was over on the northerly side of Main Street?

A. It was.

Q. And pretty nearly south of the restaurant or hotel?

A. Yes.

Q. And along the sidewalk is an iron railing to hitch the horses?

A. Yes.

Q. And the top of that railing would be about the top of—that is the platform of the band stand?

A. Well, just about.

Q. And the band stand is about, say, ten feet wide by fourteen feet long and there are seats on either side of it; at the rear end there are some steps to come up and this was right up against the sidewalk, wasn't it?

A. The steps?

Q. No.

A. It was out probably eight or ten feet, it was right up close to our cement gutter, that is, I believe, ten feet wide, if I am not mistaken.

Q. It was to the south side of the cement gutter?

A. Right to the edge of that.

Q. So there was a space between the band stand and the sidewalk of about eight or ten feet?

A. Just about.

Q. And the people were gathered about the band stand between the sidewalk and the band stand and on the sidewalk?

137 A. Yes.

Q. And people were passing to and fro on the sidewalk?

A. Well, not very much; they were so crowded they could hardly get through there.

Q. So it was quite crowded on the sidewalk?

A. It was.

Q. And the people were on the south side of the band stand too?

A. A few I should judge crowded out of the north side.

Q. There were people, vehicles and automobiles on the south side of the band stand?

A. Yes.

Q. And then vehicles and automobiles passing up and down the street?

A. I did not notice them—I was interested in the speech.

Q. Now, did you talk to anybody that night about the speech?

A. Yes, I did. I was standing by Charlie Lohman and Dr. Gates while Gilbert was speaking.

Q. Were you talking together?

A. Not very much while the speech was going on.

Q. Were you talking together?

A. Very little.

Q. How much did you talk?

A. Well, that is a hard question to answer.

Q. I thought so when I asked it. Do you know what you talked?

A. We said we did not like the speech.

138 Q. Are those the words you used?

A. Probably not exactly.

Q. Can you give the exact words Mr. Gilbert used?

A. I don't know as I can.

Q. Can you give the exact words Mr. Gilbert used?

A. I can in this statement I just made.

Q. You mean to say the words you used are the exact words Mr. Gilbert used?

A. They might vary a trifle but they are practically the same.

Q. Do they vary from what he said?

A. The substance of it was exactly the same.

A. Do they vary from what he said?

A. Well, two or three letters might; it is pretty hard for me to commit that speech while he was telling it.

Q. Did you commit it while he was telling it?

A. I did not.

Q. Then you do not mean to say when you use these words that these are the exact words he used?

A. The substance is the same.

Q. You don't mean to say these were the exact words he used, do you?

A. I can't say that.

Q. Do you remember saying anything to anybody that night?

A. We commented on the speech.

Q. You don't remember saying anything to anybody that night?

A. Yes.

139 Q. Now, to whom did you speak.

A. To Gates and Lohman and Mr. Tasse.

Q. What did you say to Gates?

A. I don't remember exactly the words; we were talking about the speech.

Q. If you don't remember say you don't remember—now, do you remember what Gates said to you?

A. Yes, he said it was rotten.

Q. Are those the exact words he used?

A. Yes.

Q. Anything further did he say?

A. I don't remember his exact words any further; I remember that statement distinctly.

Q. Do you remember what you said to Tassa?

A. No; I don't know as I do.

Q. Do you remember what Tassa said back to you?

A. Yes; he says, let's take the wagon and pull it down the street.

Q. Then you were getting mad?

A. Some of them were.

Q. Did you get angry?

A. Well, I did not like it very well.

Q. Did you get angry?

A. Yes, I did.

Q. Now, after he said what you have stated can you give me any other words he said or used after that?

A. After what time?

Q. After you say he used the words you said you say he said something else?

140 A. No; I don't know as I did say that.

Q. Did he say anything else?

A. Why, certainly he said something else besides the words I gave here.

Q. What was it?

A. I don't know; I can't think of it now.

Q. Do you mean to tell this jury what you have related is the only words that you now remember that were said by Mr. Gilbert?

A. I remember very distinctly the words I just told you.

Q. You don't remember any of the other words, do you?

A. Well, no; I don't know as I do right now.

Q. Do you remember the first thing that Gilbert said?

A. Yes.

Q. What was the first thing he said?

A. He got up, he said that Hamill had covered the ground pretty thoroughly with reference to the League but he wanted to make a few additional remarks.

Q. What further did he say?

A. He went on to tell that the Nonpartisan League was organizing the farmers—

Q. Are you giving his words?

A. Not word for word, perhaps.

Q. No. You are stating something from memory I think.

A. That was the substance of what he said.

Q. That is your memory of the substance of what he said?

141 A. Yes.

Q. But you are not giving the exact words?

A. I can't say I am.

Q. Are you able to give the exact words?

A. No; they may be the exact words, they may not.

Q. Then you don't know whether it is or not, do you, as a matter of fact?

A. That is the substance of it.

Q. Mr. Gilbert, was, by someone asked, "What is the matter with Mr. Wilson?"

A. Yes.

Q. Is that the expression that was said, "What is the matter with President Wilson," or was that the expression that was used? Which way was it said?

A. I don't know whether the word "President" was used or not.

Q. Do you remember that his answer was, "Nothing is the matter with Mr. Wilson?"

A. That was not his answer.

Q. What was his answer?

A. "I don't know. Do you?"

Q. To whom was that addressed?

A. That was addressed to Charlie Lindholm when he spoke that.

Q. Did you hear him say, "If I have said anything against the government come up here and state wherein I have said anything against the Government?"

A. No, I did not.

142 Q. Did you hear him invite anybody to come up there on the platform and say that he had said anything against the government?

A. No, sir.

Q. You did not hear that?

A. I did not hear that.

Q. You say you heard someone besides Charlie Lindholm say something, speak to him; who was it?

A. Dr. Gates.

Q. Had Mr. Gilbert pretty nearly closed his speech when Dr. Gates spoke or was it at the beginning of his speech?

A. That was after Lindholm told him he was delivering a pro-German speech.

Q. After Lindholm told him he was delivering a pro-German speech what reply, if any, did Gilbert make?

A. He said, "I am not."

Q. I am not?

A. Yes.

Q. Is that all he said?

A. All he said right then-----

Q. What was it that Lindholm said?

A. He said the remarks you are making are seditions.

Q. That made the reply to that?

A. I think Lindholm said something else; he said quite a few things there I don't remember exactly what they were now. He told him he was telling a pro-German speech and that he was talking sedition.

143 Q. Are you able to tell this jury just the words that Mr. Lindholm used to Mr. Gilbert at the time he was standing on the sidewalk?

A. He addresses those words at him.

Q. Are you able to give to this jury just the words that Charlie

Lindholm used towards Mr. Gilbert while he was standing there on the platform?

A. Perhaps not all of that because it was pretty noisy there.

Q. Then you are not able to give all the words used by Lindholm?

A. No, I can't.

Q. Are you able to give all the words used by Gilbert?

A. In his speech?

Q. No. I beg your pardon! I am asking you now—you say there was a dialogue between Lindholm and Gilbert; you say you are not able to tell all that Lindholm said to Gilbert in that dialogue. Now, are you able to tell this jury all that was said by Gilbert back to Lindholm?

A. Lindholm when he started in, he says,——

Q. Will you pay attention to me and answer my question? Are you able to tell this jury what Mr. Gilbert replied to Lindholm at the time he was speaking to him there?

A. I remember some things but first I will have to tell you what Lindholm said.

Q. No, I am trying this lawsuit.

144 A. He said, "An Englishman deliver a pro-terracotta speech; that is a good joke. Ha! Ha! Ha!" That is what Gilbert said, while Lindholm was talking to him.

Q. Now, you remember that, do you?

A. Yes.

Q. Now, do you remember anything else that Gilbert said in that connection?

A. No, I don't know as I do; he said something else; I can't speak it.

Q. You never made any memorandum of what you heard then that night, did you?

A. No, I did not.

Q. Did not write it down in any book with pencil or ink or anything else there?

A. No, sir.

Q. You talked, I suppose, with Mr. Finstuen and Dr. Gates and others about it, didn't you?

A. Oh, yes. I have talked it over with several in town; it has been the talk of the town for the last nine months.

Q. You and the rest of them have talked it over collectively, hasn't you?

A. When we have been together we would naturally talk it over.

Q. How many times have you been together and talked this matter over?

A. I could not tell——

Q. And you talked pretty nearly every day about it until you got this thing, this language down so that you can say it just as the parrot says I want a cracker?

145 A. A remark like that sticks so that a man can't miss it.

Q. Have you talked with Gates and the other men as many as a dozen times?

A. Not all of us together; I have talked with Gates and with Finsen and with Lindholm but I can't say——

Q. And have stated over substantially as you have stated here now, did you?

A. Why, yes.

Q. You remember Randall and what he said that night?

A. That is some things, I do.

Q. What did he say?

A. He outlined the purposes of the League.

Q. Can you tell me the words he used with reference to the League?

A. No, sir.

Q. Can you give me anything of his words with reference to their principles or their objects or what the League had done anywhere on earth?

A. He told me about his experience in organizing in North Dakota.

Q. What did he say?

A. He told about it——

Q. Are you giving his words?

A. Well, I can tell you some of the things——

Q. Can you give his words?

A. He told about——

Q. Can you give his words? Yes or no?

A. I can't give the exact words.

146 Q. Now, at any time in that speech did he say anything about war?

A. He did.

Q. In his first or second speech?

A. Both.

Q. Then, Gilbert, did he say anything about the war?

A. He did.

Q. Anything other than what you have stated?

A. Why, he may have.

Q. Do you know whether he did or not?

A. I can't remember.

Q. You say, speaking about war, that Gilbert was talking about war and about farmers?

A. Yes.

Q. And he spoke it would be a benefit to the farmers to get together and why it would be a benefit for them to get together?

A. Yes.

Q. And he said that they had got together and told the number that had got together in North Dakota and what they had done, didn't he?

A. I don't remember of Gilbert saying anything about that. Battinoff did.

Q. I am speaking about Gilbert—no, Mr. Witness, do you remember—if you don't say you don't—if you do, say you do—do you remember he was talking about what the Nonpartisan League had done in North Dakota by way of electing officers; that they had elected all the officers from Governor down to post-master?

A. That was mentioned that night.

147

Q. Do you remember of Gilbert talking about that?

A. I don't remember whether he did; I know that Randall did.

Q. I am talking about Gilbert. Do you remember Gilbert speaking about the platform of the Nonpartisan League upon which he stood? That they had elected to Congress a man by the name of John M. Baer of North Dakota, now I am talking about?

A. No, I don't remember him saying that.

Q. You don't remember very well. Now, do you remember he described what the platform or the series of resolutions of the Nonpartisan League were in North Dakota by the use of this language, "We stand by our country, right or wrong, as against foreign governments with whom we are engaged in war." Did he say that or that in substance?

A. No, sir.

Q. He did not say that or that in substance?

A. No, sir.

Q. Do you remember whether he used these words in his talk "In the words of President Wilson we are fighting to make the world safe for democracy." Do you remember of his using words of that kind?

A. He did not.

Q. Do you remember that when he was talking in this talk about the conscription of men that he said it would be well to conscribe material for the purpose of continuing the war, and used this 148 language, "It takes men and material to fight that war, let us then mobilize the entire forces of the nation, industries and men, and by so doing bring the greatest possible force to bear on the situation and the chances are the war will not last very long?"

A. He said nothing like it.

Q. You did not hear anything of that kind?

A. No, sir.

Q. Will you say he did not say anything of that kind?

A. I can say he did not say it.

Q. Do you remember whether he said these words in speaking of the League, the Nonpartisan League, "We believe that patriotism demands service of all according to their capacity," or words to that effect?

A. I did not hear anything like that.

Q. You didn't hear it? Now, do you remember his using these words or words in substance like these, "This organization stands for the mobilization of men and material for the winning of the war?"

A. He never said it.

Q. He did not say it?

A. No, sir.

Q. Now, were the impressions conveyed to your mind from Mr. Gilbert's speech that he was seeking to convey to the farmers there that the Government should take control of the materials—of the mills, the packing plants, the elevators and transportation 149 lines and so forth for the bringing together, as it were, under governmental control the great wealth lying in these industries and in the coal mines and in the oil fields and so forth?

A. He did not talk any, not on railroad control.

Q. Did he talk any in connection with control?

A. He did.

Q. Are you able to tell the jury how much of that Gilbert advocated that evening?

A. Anything having to do with flour mills, elevators, things like that, packing plants, stock yards, but the railroads I don't believe he mentioned.

Q. But you do remember now he talked about what you have named here: Stock yards, packing plants, flour mills and other industries.

A. He recommended the State take hold of them.

Q. State control! Don't you know that it is a cardinal doctrine of the Nonpartisan organization——

Objected to.

Question withdrawn.

Q. Do you remember what he said with reference to government taking control or managing these big industries?

A. Well, he recommended bonding the state for it. That is all I remember of that.

Q. Are you able to give the words?

A. Not the exact words.

150 Q. Do you remember whether or not Gilbert in his talk said that it would be better for the farmers to get together and organize and co-operate and it would aid the government quicker and better than not to organize, or words to that effect?

A. I did not hear him say anything about aiding government.

Q. Did you hear him say anything about aiding themselves?

A. He said it would be a good thing for them to organize.

Q. I think you said he spoke between twenty and thirty minutes?

A. I did not say anything about the length of time.

Q. Now, I will ask about how long was Gilbert talking?

A. I should judge about fifteen minutes.

Q. Do you remember whether Randall did not say something about voting for the President? "Have you had anything to do with who should be President?" Was not that Randall?

A. Mr. Gilbert made that statement.

Q. Did Mr. Randall make that statement?

A. I don't think he did, unless it was made while I was gone.

Q. Then you were gone part of the time Randall was making his speech?

A. Certainly.

Q. How much time were you gone?

A. About five minutes.

Q. While Randall was talking?

A. Yes.

151 Did you hear all of Gilbert's speech?

A. I did.

Q. You think his speech could be compressed within a space of fifteen minutes?

A. Fifteen or twenty minutes, perhaps.

Q. Did Mr. Martin talk there that night?

A. I did not hear him. I understand he talked, I did not hear him.

Q. So that you did not hear Martin talk?

A. No; I left immediately Randall finished up his second speech, I thought the meeting was over and I went away.

Q. You don't remember Mr. Finstuen introducing Mr. Gilbert?

A. Well, I might have; I don't remember; I know Finstuen introduced Randall; Finstuen presided at that meeting.

Q. You have no distinct recollection now of Finstuen introducing Gilbert?

A. I don't remember. Finstuen left the stand, I don't remember whether before or after Gilbert started to speak.

By Mr. Mohn:

Q. Do you know about what proportion of the audience there were farmers?

A. The biggest percentage were farmers; I could not say exactly what proportion, because the business men had their stores open that night and there was very few of them there, I think.

152 CHARLES A. LINDHOLM, being first duly sworn, testified as follows:

Examined by Mr. Mohn:

Q. Your name is Charles Lindholm?

A. Yes.

Q. How old are you?

Q. Where do you live?

A. I live at Kenyon, Minnesota, during the summer months.

Q. What is your profession?

A. Theatrical profession.

Q. How long have you been engaged in that?

A. I am forty-one.

A. About eighteen years.

Q. Were you in the village of Kenyon in this county on the 18th of August, 1917?

A. Yes.

Q. Did you see the defendant, Gilbert, there?

A. Yes.

Q. On the evening of that day?

A. Yes.

Q. Did you hear him make a speech?

A. Yes.

Q. Can you name some of the persons who were in the audience or to whom he spoke?

A. Yes. There was Hans Brugge, Albert Hallstad, Gilbert Flom, Andrew Finstuen, Dr. Gates—I saw a number of women and children—

Q. About how many people were there in the audience
153 there?

A. I should judge in the neighborhood of two hundred.

Q. When Gilbert spoke?

A. Yes.

Q. Do you remember any part of his speech?

A. Yes, I remember quite distinctly.

Q. You may tell the jury what you remember of his speech?

A. Well, Gilbert followed Randall, speaking, and said that Mr. Randall had pretty well covered the ground so far as the organization of the Non-partisan League was concerned; that he echoed part of Randall's speech and he spoke about the Nonpartisan League and he spoke about the industrial condition of the country today, the unrest in a way, and believed the Nonpartisan League was the solution to the matter in their cooperation and organization; and that an organization of that kind would tend to relieve the industrial unrest. He went on to say, however, that we would not have complete unity or that the thing would not be solved until our legislative halls were filled with members of this League; that would put an end to this unrest and also an end to war. He spoke about democracy; he said, "We are living today under a democracy; you hear a great deal today about democracy," he said. "They say we are going over to Europe to make the world safe for democracy"—and then he wanted to know—he says, "What is the matter with our democracy?

I will tell you what is the matter with it. Have you had anything to say who should be President of the United States?

154 Oh, that is too big a subject to talk about to you. We will take something easier. Have you had anything to say who should be governor? Have you had anything to say whether we should get into this war or not?" He says, "You know you have not." He said, "We have been stampeded into this war by a lot of newspaper rot to pull England's chestnuts out of the fire for her." He said, "If we had the wealth conscripted same as men, this war would not last forty-eight hours." And he urged them to get together and urge Congress to conscribe wealth. He spoke rather bitterly and I was much surprised—

Mr. Nordlin: I move that be stricken out.

The Court: It will be stricken.

Q. State what he said?

A. About that time I stopped him by remarking to him he was going too far and he replied he was not going too far and he asked where he should stop. I said, you are uttering seditious remarks. He said, "I am not." I told him, "you have a right to bring the farmers together in Kenyon to talk about organization or anything that was legitimate," but that he had no right to make the remarks he was making. He followed that by saying that this country was founded upon the principles of free speech and free press and he quoted from Abraham Lincoln and Washington, too, what our most prominent men today said that American citizens had the right of

free speech. That was followed by a little applause from certain parties there—I do not know who they were—then, I said, what is the matter with Wilson? I broke in on him, I said, what is the matter with Wilson? He leaned over, "I don't know what is the matter with him, do you?" I proposed three cheers for Wilson and there was quite a bit of commotion in the crowd and somebody made the remark, "We ought to run him down the street." That was followed by somebody else saying that would destroy the electric light connection with Hans Brugge's restaurant, and, following that, Mr. Randall got to his feet. In the meantime, however, between there somewhere, Mr. Gates told him he was disloyal and ought to go over to New Ulm and deliver that speech. Mr. Randall then got on his feet and I did not hear Mr. Gilbert say any more.

The Court here took an adjournment until tomorrow morning at 9 o'clock.

May 10th, 1918, 9 A. M. Court resumed.

CHARLES A. LINDOLM, recalled for cross-examination.

By M. Wilson:

Q. You are by profession an actor?

A. Yes.

Q. Been such how long?

A. About eighteen years.

Q. Are you a member of a Stock Company or have you a Company of your own?

A. Various ways.

156 Q. What do you mean by "various ways?"

A. I mean in different lines. Vaudeville, road shows, dramatic stock and so forth.

Q. You mean for movies?

A. No. Plays that are produced in New York.

Q. Have you ever appeared in any picture or movie shows?

A. Never.

Q. Your home is where?

A. Kenyon, Minnesota, during the summer.

Q. And has been at Kenyon, Minnesota, for how many years last past?

A. This is the third year, regularly.

Q. You reach there about what time?

A. From about the first of May to the first of June.

Q. And continue until when?

A. About the first of September.

Q. When your theatrical season commences?

A. Yes.

Q. And you happened to be in Kenyon on the 18th of August last?

A. Yes.

Q. You have been doing nothing except resting?

A. No, sir; I was working all summer.

Q. Engaged in what?

A. In gardening.

Q. What time did you get up on the Main Street in the evening?

A. I got up town about 7:30 or 7:40.

157 Q. There was some speaking done there that night?

A. Ye-

Q. Were you there at the time the speaking began?

A. I was there just about, a few minutes, ten minutes perhaps that I lost.

Q. When you got there how many people were there?

A. Around two hundred, I should judge, may be more came later of course—of course there were people on the street—the street was pretty well crowded with people.

Q. Do you remember the evening of the week?

A. Saturday evening.

Q. Saturday evening in that village is quite a busy night is it not?

A. Yes, sir.

Q. The farmers from the vicinity come in on Saturday nights?

A. Yes; and the town people come down town to do their trading.

Q. Now, who did you first hear speaking that evening?

A. Mr. Randall.

Q. Are you able to give any part of Mr. Randall's speech?

A. Yes.

Q. Can you tell me his opening words?

A. No, sir, because I did not hear the opening part of his speech.

Q. Can you give me his closing words?

158 A. No, I can't, because I left just before the finish; that is, I walked away.

Q. Where were you at the time Mr. Randall was talking?

A. I was right in front of the band stand, on the sidewalk, by the curb.

Q. That would be nearly in front of Brugge's restaurant and hotel?

A. Yes.

Q. The band stand at that time had about how many people in it?

A. I should say possibly eight.

Q. Are you certain as to the number?

A. No; just my judgment of it.

Q. Do you remember who acted as Chairman of the meeting?

A. I did not know at the time but I learned afterwards that Mr. Finstuen had introduced the speakers.

Q. At that time you did not know whom, as I understand you?

A. I did not know just what he was doing there, whether he was there in his capacity of a newspaper man; he is usually around when anything is going on; I did not hear him introduce the speakers or say anything.

Q. At the time that the defendant, Mr. Gilbert spoke, where were you?

A. I was in about the same position as I was when Randall spoke.
Q. Are you able to tell the jury whereabouts you were at that time?

159 A. I was in the same position as I was when Randall spoke.
Q. Are you able to tell the jury who were there about you at that time?

A. At the opening of it I saw several; I did not pay very much attention who was around me exactly at the beginning or during the speeches—it was towards the end when the crowd got a little unruly I spoke to Dr. Gates—

Q. Are you able to tell me now who were about you at the time the defendant began his talk?

A. Oh, yes; I remember of seeing a number; I saw Mr. Grogan, Tom Tassa, Hans Brugge, Dr. Gates, of course there was considerable shoving, you know, and people getting out of the way—

Q. So, while you stood there the people were passing to and fro on the sidewalk?

A. Yes, in a way.

Q. Talking among themselves?

A. Not particularly; most of them were listening; some were shoving their way, moving quietly, through the crowd to get into stores or out again.

Q. There were people on the street side of the band stand, were not there?

A. Yes.

Q. Automobiles passing along the street?

A. I did not notice them; there were several automobiles parked on each side of the street, up and down the street.

Q. Some with people in them in the street?

A. I would not say as to that; occasionally there was a car 160 moving by or in or out through there.

Q. Are you able to give the exact words that you heard fall from the lips of Mr. Gilbert?

A. Not definitely, the words, I can give it in substance.

Q. Can you give the words as they fell from his lips?

A. It would be quite impossible to repeat just the exact words, verbatim—

Q. You recognize that, as a professional man, that that is a very difficult thing to do?

A. It would be almost impossible to give absolutely, verbatim, all the sentences spoken; but the substance of it I can.

Q. Can you give me the second sentence that fell from his lips?

A. Not verbatim.

Q. Can you give me the third sentence that he used?

A. I can give the substance of it.

Q. No; can you give me the exact words?

A. That would be a physical impossibility.

Q. Absolutely so. Now, you say that Gilbert spoke something about what Lincoln and Washington said about free speech. Will you kindly tell this jury what words the defendant used as coming from the mouth of Lincoln regarding free speech?

A. I think you misunderstood my answer. I did not say he had quoted directly from any of the speeches of Washington or Lincoln.

I said he said—he made a speech there after he was heckled, 161 which he said was born-out by the speeches and had been repeated by both Washington and Lincoln to the extent that every citizen of the United States had the right of free speech; that was the right given to an American citizen.

Q. If I understood you on your direct examination you stated that Mr. Gilbert quoted from George Washington and Abraham Lincoln and you said of some others on free speech?

A. Yes.

Q. Will you kindly give this jury what words Mr. Gilbert used as a quotation from Washington on free speech?

A. Well, if I said he quoted directly from them it was a misstatement; what I meant to say was that he did not quote directly any particular words of Lincoln or Washington; he simply said—I can almost repeat what he said, "It has been handed down by such statesmen as George Washington and Abraham Lincoln that in this country every citizen is given the right to free speech and it is upon that principle that I am here addressing you tonight."

Q. Are those his exact words?

A. Well, in substance, yes, sir.

Q. During the time he was speaking most of the time the audience gave him respectful attention, didn't they?

A. Oh, no. There was not any time during the whole 162 meeting there what you would call aethal respectful attention.

Q. Do you mean to tell the jury while they were all of them speaking that the crowd was noisy and unruly and a kind of attempting to disrupt the meeting?

A. Oh, no. Respectful attention would be the unanimous and quiet attention of everybody, which was not given; there was a noisy meeting from the time I came to when I went away; there was sometimes a dissent in regard to what was said, not enough to disturb the speaker or to call the attention of the speakers or the crowd but the folks that were making these dissenting statements were numerous.

Q. Someone said to him, "What is the matter with Wilson," or "What is the matter with President Wilson," there had not been any thing thrown at him then?

A. Yes, sir; I was the one that said that. I made that statement.

Q. You says, "What is the matter—

A. With President Wilson—yes.

Q. And his reply was—leaning over towards where the sound came from—"I don't know. Do you?" or words to that effect?

A. Yes.

Q. Is that about right?

A. Yes.

Q. Now, were you invited to come up there on the band stand and show wherein he had said anything against government 163 or against the President?

A. No, sir.

Q. You did not hear that?

A. No, sir.

Q. See anybody else invited?

A. Do you mean to say invited by one of the speakers?

Q. Yes.

A. No, sir; I was urged by somebody in the crowd to go up.

Q. You were urged by someone to go up?

A. Yes. Or statement. "Why not go up there and give them a speech, Charlie?" Some one said to me.

Q. Why did not you go up there?

A. I would not be seen publicly in company with men who had made such utterances. I would not be seen on the same stand with them; I have made speeches, many of them——

Q. That is your opinion?

A. Yes.

Q. Hence you were quite prejudiced, both as to the speakers and as to the substance of their speeches, were you not?

A. No, sir.

Q. You have heard of the rabble which crucified our Saviour?

Objected to as incompetent and immaterial.

Objection sustained.

Q. You had never seen any of these gentlemen before, had you?

164 A. No, sir.

Q. You knew nothing about their private character, did you?

A. No, sir.

Q. You don't today, do you?

A. Yes, sir.

Q. Do you know the private character of any of these men?

A. No, sir; I have formed in my mind——

Q. I am asking you what you know of actual knowledge?

A. Why, so far as what I myself know I do not.

Q. Then you don't know a thing, do you; don't know whether they are married or whether they are single, whether they lead honorable lives, or not, do you?

Objected to, as immaterial.

Objection sustained.

Exception noted.

Q. So you don't have a very kindly feeling towards them or any of them?

A. Not afterwards; no, sir.

Q. Did you have when you went there?

A. No, sir; I had no feeling whatever; did not know anything about it.

Q. Do you know of your own knowledge or by any reading as to what the principles of the Nonpartisan League are?

objected to as immaterial.
Objection sustained.

Q. Did you hear that evening anything of the statement
165 of what the principles of the Nonpartisan League are?

A. Yes, sir.

Q. You heard it stated it was in favor of government ownership
of the industries, the great industries of the country, didn't you?

A. No, sir.

Q. Did not you hear it stated that it was the purpose of the organization,
for the vigorous prosecution of the war, to take charge of
the flouring mills, packing plants, coal mines and oil fields and the
stockyards and the elevators; did not you hear that talked?

A. You mean it was the purpose of the organization to do that?

Q. Yes.

A. No, sir; not to take charge. My understanding, as I heard it,
was the League was organized to regulate by legislation, if possible,
the handling of these things, not to take possession.

Q. But to take governmental control?

A. They claimed they were going to control——

Q. You know the government is now operating the railroads,
don't you?

A. Yes.

Objected to as immaterial, and move the answer be stricken out.
Overruled.

Q. You know the government is operating the flour mills of the
country, don't you?

Objected to as immaterial.

Objection sustained.

166 Q. Are you able to tell this jury what was said at that
meeting with reference to the purposes of the Nonpartisan
League to unite the agricultural interests along with the industrial
interests?

A. Well, I can't remember there was anything said as to any
direct connection between the farming interests or industry or other
industries, except, that, of course, there was a great deal said about
mines and factories and the necessity of organizing the farmers in
order to promote the welfare of the farmers and possibly, I don't
know if that was said, that indirectly thereby the other industries
would be affected to some degree——

Q. Do you remember that they spoke in quite laudatory terms
as to what they had accomplished in North Dakota?

A. It might have been said by Mr. Randall before I came;
although he could not have gone very far into the matter before I
arrived; he spoke about the organization in North Dakota and some-
thing about the work that had been done there, and about a num-
ber of ideas, which were spoken of in a laudatory way.

Q. It would cure almost all the ills that political life is heir to
if the Nonpartisan League should succeed?

A. And got into power; they would accomplish everything after they got into power.

Q. That they had succeeded in electing a member of Congress from North Dakota?

A. I did not hear him say that but I knew it was a fact.

167 Q. Now, let me ask you, when speaking of what they had accomplished in a political way in North Dakota, and in speaking as to where the League stood with reference to the war, didn't the defendant here say this or this in substance. "We, meaning the Nonpartisan League, in resolutions that were adopted at the meeting prior to the election of Congressman Baer in North Dakota. "We stand for our country right or wrong as against foreign governments with whom we are engaged in war?"

A. No, sir.

Q. You did not hear that or will you swear he did not say that?

A. He did not say that while I heard it.

Q. Do you remember of his using these words or in substance. "In the words of President Wilson we are fighting to make the world safe for democracy?"

A. No, sir.

Q. Do you remember whether he explained what democracy meant?

A. No, I don't remember he said anything about democracy excepting he said, "You have heard a whole lot about democracy, we been hearing a great deal about democracy" —

Q. Did he say or quote anything about Detowile on Democracy — who wrote a treatise on democracy?

A. I did not hear him say anything about that.

168 Q. Do you remember his saying or was it said there at that time that it was one of the doctrines or tenets of the Nonpartisan League that it was in favor of conscripting wealth as well as of conscripting men?

A. I heard him speak about the conscription of wealth if men were conscripted.

Q. Now, in that connection did he use these words? "It takes men and material to fight wars; let us then mobilize the entire forces of the nation, industries and men and by so doing bring the greatest possible forces to bear on the situation and the chances are the war will not last long," or words to that effect?

A. No, sir.

Q. When speaking there do you remember of his saying the patriotism demands the services of all according to their capacity?

A. No, sir, I did not hear him say that.

Q. Do you remember him saying these words, "We," meaning the Nonpartisan League, "stand for mobilizing men and material for the winning of the war," or words to that effect?

A. No, sir, I did not hear him say that.

Q. You will not say he did not say that?

A. I would almost say he did not because I heard pretty near everything he said; I was there all the time.

Q. The prominent feature of the speeches made there that eve-

ning was to impress the farmers with the fact it would be best for him to join his efforts with others in the way of combination and co-operation with those of the other industries for his betterment or help,—best interests? Was not that the cardinal idea?

A. That might be the idea; it was not put just that way. They were urged to join the league, of course.

Q. Sure! And by reason of joining the League these benefits would follow?

A. Oh, yes, that was pictured to them.

Q. Now, in your profession as an actor, for the length of time you have been such, you judge somewhat of the character of men's language, don't you, as to whether he is a man of education or refinement; you gauge him fairly well, pretty fairly well in your profession?

A. Yes. It is possible to gauge a man.

Q. Did this defendant here use any high faluting words or was it a plain, common sense talk?

A. I thought he used very good English.

Q. Did he use any high sounding phrases or was it a plain, clean talk?

A. He did not use any extreme composition of English.

Q. Did you get the impression he was a man who was in the habit of making public speeches?

A. Well, not as a professional, no.

Q. Now, you would not have called, from his enunciation and pronunciation there, you would not have called him an American, would you?

A. No, sir.

Q. His enunciation and pronunciation is positively English, isn't it?

A. Oh, not very particularly; about medium.

170 Q. Someone said, "You are making a pro-German speech." Did not they?

A. Yes.

Q. Did you know who they were?

A. No, I did not; somebody near me said that.

Q. It was not Dr. Gates, was it, as a matter of fact?

A. Well, I don't think Dr. Gates was the first one who said that.

Q. But did Dr. Gates say it?

A. Yes, right afterwards, he said it afterwards. "You are making a pro-German speech and you ought to go over to New Ulm to make it."

Q. You heard somebody then say, "Take him down river?"

A. Yes.

Q. You heard somebody then say, "Put him up on a telephone pole," or something like that?

A. Oh, no. Just to run the wagon down the street or into the river.

Q. Where were you born, Mr. Witness?

A. In Goodhue County.

Q. How old are you?

A. Forty-two.

Q. Born in what part of Goodhue County?

A. White Rock.

Q. How long have you known Dr. Gates?

A. I have known Dr. Gates about twelve years.

171 Q. Since this meeting you and the Doctor have talked quite a great deal about it?

A. No, sir; I have not talked to Dr. Gates but very little about it.

Q. You have stated some of the words that were used there; were those words used by the defendant consecutively, as you have given them?

A. What words do you refer to?

Q. On your direct examination.

A. No, sir, of course I would not say they were given consecutively because they were—they impressed me, when I heard them, as being striking.

Q. No—that answers my question. Have you talked with any of the gentlemen that were there that night, for instance, Mr. Gilber, A. Flom, Andrew Finstuen, Albert Hillstad or Dr. Gates or John Wollacker?

A. Yes, I have occasionally talked with them in a general way.

Q. Have you ever talked over with Mr. Flom or Finstuen or Albert Hillstad or Dr. Gates or John Wollacker the language you gave here yesterday as coming from the lips of the defendant?

A. No, sir.

The State rests.

Mr. Nordlin: The defendant moves the dismissal of the action upon the ground that the State has failed to prove the offence, if any charged in the Indictment and upon the further ground the testimony which has been given in this case is so highly improbable and so impossible that evidence ought not to be given by this Court.

The Court: Motion denied.

O. F. HENKEL, being first duly sworn, testified as follows:

Examined by Mr. Nordlin:

Q. Your name is?

A. O. F. Henkel.

Q. How old a man are you?

A. Fifty-nine.

Q. Where were you born?

A. State of Wisconsin.

Q. What is your business?

A. Farmer.

Q. Where do you live now?

A. In the township of Holden in this County.

Q. How far from Kenyon?

A. About three miles.

Q. How long have you been in that locality?

A. Fifty-four years.

Q. How long have you been farming?

A. I have lived on the farm continually for these fifty-four years; farming for myself since 1880.

Q. Were you present at the meeting held on the evening of August 18th, 1917, here in Kenyon?

A. Yes, sir.

Q. Did you hear the defendant talk?

A. I did.

173 Q. Did you hear all of his talk?

A. I did.

Q. I will ask you if you heard him at any time during that talk state, "We are going over to Europe to make the world safe for democracy but I tell you we had better make America safe for democracy first." Did he make that statement at that meeting?

A. No, sir, he did not; Mr. Randall in his first speech—Please repeat that question.

(Question repeated by the reporter.)

A. No, sir, he did not; he did not.

Q. Was there any statement similar to that made by Mr. Gilbert?

A. Yes.

Q. What was the statement?

A. Mr. Gilbert said, "In the words of President Wilson we will carry on this war to make the world safe for democracy."

Q. Did he say anything whatever about making America safe for democracy first?

A. No.

Q. "You say, what is the matter with our democracy? I will tell you what is the matter with it. Have you had anything to say as to who should be President? Oh! That is such a high office. But have you had anything to say as to who should be Governor"—did Mr. Gilbert make that statement?

A. He did not—Mr. Randall—

Objected to.

174 Q. Was any statement of that kind made at that time?

A. Yes; Mr. Randall made that statement in his first speech.

Q. I will ask you, did Mr. Gilbert at that time, say anything like this, "Have you had anything to say as to whether or not we should get into this war?"

A. No, sir, he did not.

Q. Was there anything like that said at the meeting, if you recollect, by anyone else?

A. Please repeat that question.

(Question repeated by the reporter.)

A. Not to my recollection.

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Q. Was there anything like this said by Mr. Gilbert, "If this is such a great democracy, for Heaven's sake, why should we not vote on the conscription of men?"

A. No, sir; he did not put it that way. He said——

Objected to; that answers the question.

Q. Did he say something similar to that?

A. Yes.

Q. What did he say?

A. He said, "If we conscript men for carrying on this war that we should also conscript the resources of the country, such as the flour mills, packing plants and other industries of that kind necessary to carry on the war; we should conscribe them as well."

Q. Did he refer to any other industries besides those you have mentioned?

175 A. Well, he may have but those were the interests that I remember he mentioned.

Q. I will ask you if Mr. Gilbert made this statement at any time during his speech, "We were stampeded into this war by newspaper rot to pull England's chestnuts out of the fire for her?"

A. No, sir.

Q. Was any statement similar to that made at that meeting?

A. Mr. Randall made that statement in his first speech or a statement similar to it——

Objected to.

Objection sustained.

Q. I will ask you this. Did Mr. Gilbert at any time during that speech use this language or anything like it. "I tell you if they conscripted wealth like they have conscripted men this war would not last over forty-eight hours?"

A. He did not, sir.

Q. What did Mr. Gilbert talk about during that speech of his?

A. Well, he started out to make some complimentary remarks about Randall's speech and then he said something of the success of the Nonpartisan League in North Dakota in electing Mr. Baer a member of Congress, especially referring to the large majority which he got at that election; that was the first part of his subject, and he also called attention that it was necessary that we should support the war to our best capacity"—that is that we were available as

176 men to go to the war. And, also, he said, "That our material resources—that our capital"—those were some of the things he said.

Q. Do you remember anything else he said at that meeting?

A. I can't say definitely—I don't recollect anything just at present unless it was at the final—that is, about the closing of the speech—some one in the audience there made the remark that he is making a pro-German speech. Mr. Gilbert retorted and said, "Ain't that a joke? An Englishman make a pro-German speech?"

Q. Do you remember anybody being invited up upon the platform?

A. I do.

Q. State what was said?

A. I did not hear any remarks out of the audience but Mr. Gilbert called upon somebody that spoke to him and said, "Come up here and tell us what you have to say in regard to these conditions and this speech."

Q. That is, he invited somebody who spoke to him to come up on the platform and make a talk to the meeting?

A. He did.

Q. During Mr. Gilbert's talk were there any interruptions of any kind?

A. Not of any importance, that I know of——

Mr. Mohn: I move that be stricken out as a conclusion of the witness.

The Court: The answer may be stricken out.

Q. Were there any interruptions during his speech proper,
177 were there any interruptions?

A. I don't recall them.

Q. You don't recall any—Have you any recollection of Mr. Gilbert talking about the League platform; yes, or no?

A. Yes.

Q. What is your recollection as to what he said?

A. In speaking of the campaign they had made in North Dakota he put it this way, that Mr. Baer had been elected on a platform that made it very plain that the League was for the winning of the war, of this war, whether right or wrong.

Q. That is your recollection of what he said?

A. That is my recollection, yes, sir.

Q. Have you any recollection as to whether Mr. Gilbert spoke about the duty of the farmers in connection with the war?

Objected to as leading and suggestive.

Objection sustained.

Exception noted.

Q. I will ask you this: Did not Mr. Gilbert say, "This organization stands for mobilization of men and material for the winning of the war?"

Objected to as leading, and immaterial and suggesting.

The Court: I think it is material. I think it is proper to prove that, if it was said, but the question, as asked, is a leading one. You are entitled to put in direct proof in the usual way and you may ask any question, anything to elucidate what Mr. Gilbert said pertaining

178 to the war, to the substance of this charge, but, the question, as asked, is a leading one and, if objected to, is sustained on that ground.

Exception noted.

Q. Did Mr. Gilbert say anything about winning the war, or, if he did, what?

A. In connection with that statement, that is if men and resources were conscripted it would aid in the winning of the war; outside of that I don't recall anything.

Q. You do not recall any other statement he made about the war?

A. I do not.

Cross-examination.

By Mr. Mohn:

Q. You say when Mr. Gilbert started to speak he made a few complimentary remarks about Mr. Randall's speech. Is that right?

A. That is correct.

Q. Mr. Randall had preceded Mr. Gilbert in speaking?

A. Yes.

Q. And Mr. Gilbert, when he commenced to speak called attention to the fact that Mr. Randall had made a speech and covered the purposes of the Nonpartisan League quite thoroughly, did he not?

A. I would not say as to that.

Q. You don't remember whether Mr. Gilbert said that or not?

179 A. I don't recollect he said anything of the kind.

Q. Did he say that he approved all Randall had said?

A. He did not.

Q. What did he say about Mr. Randall?

A. He said he had made a very nice and interesting speech substantially covering the organization of the League.

Q. And did not he say that since Mr. Randall had covered organization of the League he, Gilbert, would not take much time on that subject?

A. I don't recall that.

Q. You don't know whether he did or not—how long did Gilbert speak?

A. I should say twenty minutes, perhaps thirty; twenty minutes would be my estimate.

Q. You are a member of the Nonpartisan League?

A. Yes.

Q. Have been for some time?

A. Yes.

Q. And you have taken quite an interest in the Nonpartisan League, have you not?

A. I have, some interest, yes.

Q. And you have taken some interest in the defense of this prosecution?

A. Yes, sir; I am called as a witness and as a witness why, surely I know what is going on.

Q. You say you are a farmer?

A. Yes.

Q. How large a farm have you?

180 A. Two hundred and twenty acres.

Q. You have a lot of stock on your farm?

A. Some stock, yes, sir.

Q. You have been opposed to this war, haven't you?

A. As a matter of choice, yes—as a necessity I would say, no.

Q. You have been opposed to this war, haven't you?

A. At the beginning of the war I was not interested in it.

Q. You have been opposed to the United States going into this war, haven't you?

A. As I said; as a matter of choice, yes—as a necessity, no.

Q. So you differentiate between choice and necessity?

Q. You have made expressions several times that you were opposed to the United States going into this war?

A. Yes.

A. Before the war, the commencement of the war I think I did.

Q. And subsequently you have been opposed to it?

A. No, sir.

Q. You did not buy any of the first issue of Liberty Bonds?

Objected to as immaterial.

Objection overruled.

A. I have Liberty Bonds of the first issue.

Q. When did you buy them?

181 Objected to as wholly immaterial.

Objection overruled.

Exception noted.

A. I received them as a gift.

Q. As a gift?

A. Yes, sir.

Q. You did not buy any?

A. Not of the first issue.

Q. Nor of the second?

A. No, sir.

Objected to on the same ground.

Same ruling.

Exception noted.

Q. Now, you stated that Mr. Gilbert spoke about twenty or twenty-five minutes?

A. Twenty minutes; that is as near as I can get.

Q. What you have stated here as to what he said is practically all you can remember of the speech?

A. Just at this minute I can't recall anything else.

C. C. LAWSON, being first duly sworn, testified as follows:

Examined by Mr. Nordlin:

Q. What is your full name?

A. C. C. Lawson.

Q. Where do you live?

A. Dodge County.

Q. Have you lived here in Goodhue County?
182 A. I was born in Goodhue.
Q. How old a man are you?
A. Fifty-nine.
Q. What is your business?
A. Farmer.
Q. Been farming practically all your life?
A. All my life.
Q. Are you a member of the League?
A. I am now.
Q. When did you become a member?
A. Last September.
Q. That was after the meeting at Kenyon?
A. After the meeting at Kenyon.
Q. Were you present at that meeting at Kenyon?
A. Yes.
Q. Did you hear the defendant, Gilbert, speak?
A. Yes.
Q. Did you hear all that he said?
A. Yes.
Q. You were there during the entire time he talked?
A. Yes.
Q. At that meeting did he say, "We are going over to Europe to make the world safe for democracy, but, I tell you, we had better make America safe for democracy first." Did he say that?
A. No, sir.
Q. You know he did not?
A. I know it positively.
Q. "You say what is the matter with democracy? I will tell you what is the matter with it. Have you had anything to say as to who should be President; have you had anything to say as to who should be governor of this state?" Did he say anything like that?
A. Not to my knowledge——
Q. If he had said it would you have remembered it?

Objected to, incompetent.
Objection sustained.

Q. Did Mr. Gilbert at that meeting say, "Have you had anything to say as — whether or not we should go into this war? You know you have not." Did he make that statement?
A. No.
Q. Did he make this statement, "If this is such a great democracy, for Heaven's sake, why should we not vote on conscription of men?" Did he say that?
A. No.
Q. Did he say anything about the conscription of men?
A. I think he did but I can't repeat it.
Q. Can you give the substance of it in your own language——

Objected to, no foundation laid.

The Court: If the witness knows what the defendant said in that regard he may state what it was; if he does not know don't take up any time.

A. I don't know positively at all what he said.

Q. Excepting you know he did not make the other statement?

A. He did not make the other statement.

184 Q. Did he use the words, "For Heaven's sake" at all in his talk?

A. No.

Q. Did he say, "We were stampeded into this war by newspaper rot to pull England's chestnuts out of the fire for her." Did he say that?

A. He did not.

Q. He did not?

A. He did not.

Q. Did he say, "I tell you if they conscripted wealth like they have conscripted men this war would not last over forty-eight hours." Did he say that?

A. No.

Q. What do you remember about what he said?

A. Why, most that I remember is when the controversy began. Do you want me to state the controversy?

Q. Go ahead.

A. Somebody in the crowd said, "What is the matter with Wilson," Mr. Gilbert replied, "Nothing that I know of; do you know anything." Then again the question was, "What is the matter with our Government?" "Nothing that I know of," he says, "it's all right." Then there was some few other questions spoken and the fellows said, "You made a pro-German speech," and another fellow right standing alongside of this fellow that said that said, "You must be an Englishman?" and Gilbert replied, "That is the

185 dope, he says, an Englishman making a pro-German speech," and he drew out a paper out of his pocket and read what the League stood for, and that ended it; there was nothing more said.

Q. Was there any disturbance of any kind while this was going on?

A. Not much; there was a little talk, back and forth.

Q. Was Mr. Gilbert interrupted at all during his speech up to that time?

A. Not up to that time.

Q. Up to that time he had not been interrupted at all?

A. Not at all.

Q. Do you remember Mr. Gilbert speaking of Congressman Baer and the war?

A. Yes, Congressman Baer is running on the Nonpartisan ticket and he was elected with a bigger majority than all his opponents.

Q. Do you remember anything more he said at that time in connection with Baer and the war?

A. No; not at that time.

Q. How far from Kenyon do you live?

A. Seven miles they call it.

Q. Do you remember Mr. Gilbert saying anything about the conscription of industries in the war?

A. Yes.

Objected to; leading and suggestive.

The Court: He has answered.

Q. What do you remember he said?

A. He said the government should conscribe the flour mills, the railroads, the coal mines and all industries under present conditions.

186 Q. Do you remember anything else that was said by Mr. Gilbert at that time?

A. No.

Q. You say that Mr. Gilbert took out a paper and read it or read from it in regard to how the League stood on the war?

A. Yes.

Q. Do you remember what he read, in substance?

A. No, I don't.

Q. Do you remember whether Mr. Gilbert invited anybody up on the platform or not?

Objected to as leading.

Objection sustained.

Q. What else was said by Mr. Gilbert during the interruption you have referred to?

A. Nothing more than what I have told.

Q. You can't remember anything else?

A. No.

Q. You can't remember anything else that was said by him during the interruption?

A. No.

Q. Did you see a man by the name of Finstuen on the platform?

A. Yes.

Q. Did you hear him talk?

A. He introduced the speakers.

Q. He introduced Gilbert?

A. Yes.

Q. Did he introduce Mr. Randall?

A. I was not there at that time.

187 Q. What was Mr. Finstuen doing, if you know, while Mr. Gilbert was talking?

A. Nothing, except sitting in a chair at the southeast corner of the band wagon.

Q. Do you know whether he was taking notes or not?

A. No, he was not.

Q. Sure of that?

A. I am positive; I was looking right over his lap to look at Gilbert.

Q. You were looking right directly at him from the position where you stood?

A. Something in the position you are to me now.

Q. At that time?

A. Yes, sir.

Q. Now, I am going to ask a few questions for the purpose of the record. Did Mr. Gilbert state at that time and place the following words, "We are going over to Europe to make the world safe for democracy——

Objected to as leading; putting the answer into the mind of the witness.

Mr. Nordlin: It is offered by the defense for the purpose of impeaching the statements made by the witnesses for the State and a direct contradiction to the answers made in response to questions put by counsel for the defense.

The Court: By whom?

Mr. Nordlin: By Mr. Wilson for the defense.

The Court: Questions put on cross-examination?

188 Mr. Nordlin: On cross-examination.

The Court: Objection sustained.

Q. Do you remember anything further that was said by Mr. Gilbert as to what the League stood for with reference to the war?

A. I don't remember.

Q. You don't remember?

A. I don't remember.

Cross-examination.

By Mr. Mohn:

Q. As I understand you you don't remember as to what Mr. Gilbert said with reference to this war or about the war? You don't remember that, you say?

A. I don't remember all of it.

Q. You have given all that you remember of Mr. Gilbert's speech?

A. I have.

Q. And he spoke how long?

A. Half an hour I should think.

Q. And of course he said lots of things you can't remember?

A. Of course.

Q. And what Finstuen was doing there all the time of course you don't know?

A. I know pretty well.

Q. Were you watching him all the time?

A. I was looking all the time across his lap. All the time, right across.

189 Q. Where was the speaker with reference to Finstuen's lap?

A. Just about opposite.

Q. How far away from Finstuen was the speaker?
 A. About ten feet, probably.

Q. In which direction?
 A. West of him.

Q. West of the speaker?
 A. North and west.

Q. Where did you stand with reference to the speaker?
 A. I stood in the street.

Q. Which direction from the speaker?
 A. In the southeast.

Q. Did you stand there all the time?
 A. All the time while Mr. Gilbert spoke.

Q. And Mr. Finstuen was sitting west of the speaker?
 A. He was sitting east of the speaker, southeast.

Q. Where did you stand with reference to the speaker?
 A. Southeast.

Q. And Finstuen sitting in the same direction from Gilbert when he spoke?
 A. I was standing up southeast of the band wagon.

Q. Where was Gilbert when he spoke?
 A. Gilbert was a little to the northwest—about the middle of the wagon.

190 Q. In which direction were you from Gilbert when he was speaking?
 A. Southeast direction.

Q. In which direction was Finstuen sitting from Gilbert when he was speaking?
 A. Southeast.

Q. So that Finstuen was between you and Gilbert?
 A. Yes.

Q. Finstuen was facing Gilbert or was not he?
 A. Yes.

Q. And you were facing Gilbert?
 A. I was facing Gilbert.

Q. You were both looking at Gilbert of course when he was speaking?
 A. Why, yes.

Q. And you paid attention to what Gilbert said?
 A. Somewhat, yes.

Q. You did not pay attention to anybody else, particularly, did you?
 A. Why, I see all on the wagon.

Q. You watched all that were on the wagon?
 A. I did.

Q. And you did not see anybody on the wagon having paper or pencil?
 A. Only that Finstuen had a piece of paper in his hand.

Q. You saw that?
 A. He had a piece of paper from which he read the program.

Q. See him have anything else?

191 A. No.
 Q. Whether he had or not you don't know?
 A. He had his hat.
 Q. That was when he was standing up you saw that?
 A. No.
 Q. Now, Mr. Gilbert was standing on the platform, wasn't he?
 A. Yes.
 Q. Was there any railing round that platform on the wagon?
 A. Yes.
 Q. A railing something like that (indicating rail in Court room)?
 A. Something like that.
 Q. How high was it about?
 A. Just about that height.
 Q. Of course Finstuen was inside of that railing all the time when he was sitting?
 A. Yes.
 Q. And the floor of that platform was about how high from the ground?
 A. About three feet, four inches something like that.
 Q. This railing was on the top of that floor, wasn't it?
 A. It was just about my height.
 Q. And then you stood down on the ground?
 A. Yes.
 Q. And your head or your eyes would be on a level with the top of the railing round that wagon floor?
 192 A. I was higher up—the street slopes this way (indicating) a little.
 Q. You were a little higher?
 A. Yes.

P. P. EXETH, being first duly sworn, testified as follows:

Examined by Mr. Nordlin:

Q. What is your full name?
 A. Peter P. Exeth.
 Q. Where do you live?
 A. Town of Kenyon.
 Q. What is your business?
 A. Farming.
 Q. How old a man are you?
 A. Fifty-one.
 Q. Where were you born?
 A. Norway.
 Q. Are you a member of the Nonpartisan League?
 A. No.
 Q. How long have you lived in Goodhue County?
 A. About forty-eight years.
 Q. Were you present in Kenyon on the evening of August 18th, 1917?
 A. Yes.

Q. You were at the Nonpartisan League meeting there?

A. I was.

193 Q. Did you hear Mr. Gilbert talking at that meeting there?

A. I did.

Q. Were you present during his entire talk?

A. Well, I was; yes, I was present but not as near as when I was there other times.

Q. So that I gather that at certain times you were near the wagon, other times you were further away?

A. Yes.

Q. But you were present during all the talk?

A. Yes.

Q. I will ask you if you heard Mr. Gilbert at any time during his talk say the following, "We are going over to Europe to make the world safe for democracy, but, I tell you, we had better make America safe for democracy first." Did he say that at any time during his speech?

A. No, not exactly that way.

Q. What did he say?

A. "We will stand back of Wilson, the League will stand back of President Wilson and make America safe for democracy."

Q. Did he say, "What is the matter with our democracy?" I tell you what is the matter with it. Have you had anything to say as to who should be our President? Have you had anything to say as to who should be governor of this state?" Did he say that?

A. No, I did not hear him say that; no.

Q. Did he say this: "Have you had anything to say as 194 to whether we should go into this war?" Did he say that?

A. No.

Q. Did he say this, "If this is such a great democracy, for Heaven's sake why should we not vote on the conscription of men?" Did he say that?

A. No.

Q. Did he use the words "for Heaven's sake", at any time during his talk?

A. I can't remember that.

Q. You can't remember he did. Did he use this language or anything like it in substance? "We were stampeded into this war to pull England's chestnuts out of the fire for her?"

Q. I don't remember hearing him say that.

Q. You don't remember hearing him say that?

A. No.

Q. "I tell you if they conscripted wealth like they have conscripted men this war would not last over forty-eight hours." Did he say anything like that?

A. No.

Q. Are you sure of that?

A. Yes.

Q. Tell us what you do remember of his speech?

A. I don't remember a great deal of it—it is a long time ago. In the last part some of the audience, some of the crowd began getting

mad like; they told him he was making a pro-German speech. One of the persons in the crowd said he was an Englishman and 195 Mr. Gilbert answered and said, "That an Englishman making a German speech; that was a joke," and laughed.

Q. Was anything else said by Mr. Gilbert at that time?

A. I don't remember anything.

Q. Did you hear Mr. Gilbert talking to Dr. Gates?

A. Well, I can't say for sure whether it was Mr. Gates or not—in the crowd that talked to Gilbert.

Q. What did Mr. Gilbert say?

A. He says, "An Englishman accused of making a pro-German speech," he says, "that is a joke."

Q. Did he say anything else?

A. In the last part of his speech?

Q. When they were asking him questions?

A. No; I don't remember.

Q. Did Mr. Gilbert extend an invitation of any kind to anybody there?

A. He did.

Objected to as calling for a conclusion.

Q. State what he said?

A. He says he wanted them to come up on the stand and explain themselves if they had anything against his speech.

Q. He wanted anyone to get up on the stand who had anything against his speech and explain the reason he was against it; is that it?

A. Yes.

196 Q. Do you remember Mr. Gilbert saying anything about Congressman Baer and the war?

A. He did.

Q. What did he say?

A. He said he got the big majority of the votes.

Q. Do you remember anything else he said?

A. No, not exactly that I can repeat word for word.

Q. Do you remember anything said by Mr. Gilbert with reference to the platform of the League in the war?

A. No, I do not.

Q. You have no distinct recollection?

A. No.

Q. Was Mr. Gilbert interrupted in any way during his speech by any one in the crowd?

A. No, sir.

Q. You are positive of that?

A. Not until the last—the very last thing.

Q. I am going to ask another impeaching question; don't answer until the Court rules.

Objected to.

Mr. Nordlin: The understanding is that all these impeaching questions were asked but not answered come in under this same ruling?

The Court: Yes.

197 Cross-examination.

By Mr. Mohn:

Q. You came into Kenyon that evening?

A. Yes.

Q. From the farm to Kenyon that evening?

A. Yes, I did.

Q. Of course you transacted some business there?

A. Yes, I did.

Q. And you went to where this crowd was?

A. I did.

Q. You moved about considerably there, didn't you?

A. I did at last, yes.

Q. There was considerable noise there at times, wasn't there?

A. Not during the meeting.

Q. Where were you standing?

A. Standing about northeast from the stand.

Q. On the sidewalk?

A. Right on the edge of the sidewalk.

Q. How long were you standing there?

A. I was standing there while Randall was speaking and just as Gilbert started, then kind of backed up to get up closer to the wall of the building—there was quite a crowd in front of me, I stepped back.

Q. When Mr. Gilbert spoke you were up against the building?

A. Not quite but I was nearer the building than I was before.

198 Q. There was quite a crowd around the band stand still at that time?

A. There was.

Q. How many people would you say—two or three hundred?

A. Oh, yes.

Q. And most of these people were on the north side of the band stand, weren't they?

A. I don't know.

Q. There were a lot of people standing in between the band stand and the sidewalk?

A. Oh, yes.

Q. In other words, there were a great many people standing between you and the band stand when Gilbert was talking?

A. Oh, yes, quite a few.

Q. Perhaps fifty or sixty at that particular place or more?

A. I stood about in the middle of the sidewalk there.

Q. Well, while you were standing there, there were people passing up and down on the sidewalk, weren't there?

A. There might have been a few but it was pretty quiet.

Q. People were walking back and forth?

A. Oh, yes; a little.

Q. That is the principal street in the Village, quite a very busy

street on Saturday evenings, as a rule and there were quite a number of people in town that night walking on that sidewalk?

A. Yes.

199 Q. That is a cement walk?

A. Yes.

Q. About how wide; ten or twelve feet?

A. I should judge around there.

Q. But there were people walking up and down constantly on that sidewalk?

A. There was not much—

Q. There was more or less noise there, I suppose?

A. Not at that time.

Q. Not at that time?

A. Not while he was speaking.

Q. But there was some noise and trampling around there at all times, people walking back and forth?

A. No, there was not much noise.

Q. How far do you think you stood from the band stand?

A. I can't say exactly.

Q. Of course you could not hear all that was said?

A. Why, I could easy have heard it if I had paid attention to it but I was not paying attention to it all the time—at last.

Q. You were talking to other people there?

A. No, I was not talking—

Q. A good many things were said there that undoubtedly you did not pay any attention to.

A. Some said that I did not hear, didn't pay attention to.

Q. In fact it was towards the last when somebody said that Gilbert was making a pro-German speech that you paid particular 200 attention, wasn't it?

A. I heard that.

Q. That was spoken rather loudly?

A. Yes, it was.

Q. And that attracted your attention?

A. Yes.

Q. From that time on you remember what occurred there?

A. I do.

LARS H. UNDERDAHL, being first duly sworn, testified as follows:

Examined by Mr. Nordlin:

Q. What is your full name?

A. Lars H. Underdahl.

Q. Where do you live?

A. Town of Holden in this County.

Q. How long have you lived there?

A. I was raised and born there.

Q. What is your business?

A. Farmer.

Q. How long have you been farming?

A. Been farming on my own hook fifteen years, was a renter for five years.

Q. Married man?

A. Yes, sir.

Q. With children?

A. Yes, I got a big family.

Q. Are you a member of the League?

A. I am now, yes.

201 Q. When did you become a member of the League?

A. Some time the last part of August or September, last summer.

Q. Were you a member of the League at the time you were in Kenyon on the 18th of August, 1917?

A. No, sir; I was not.

Q. Did you attend that meeting?

A. I did.

Q. How did you happen to go there?

Objected to as immaterial.

The Court: Show what took place there?

Q. Did you hear all that was said by Mr. Gilbert at that meeting?

A. I was around there all the while.

Q. You were there the whole of the time?

A. Yes.

Q. Did you hear all he said?

A. Yes, I guess I did.

Q. I will ask you if during that talk Mr. Gilbert said this or anything in substance like this, "We are going over to Europe to make the world safe for democracy, but I tell you we had better make America safe for democracy first." Did he use that language?

A. I never heard that he used any such language as I can remember.

Q. Anything like it?

A. No.

Q. I will ask you if he said this either in words or in substance, "You say what is the matter with our democracy? I tell you what is the matter with it. Have you had anything to say as to who should be our President? Have you had anything to say as to who should be governor of this state?" Did he say anything like that?

A. Mr. Gilbert never said any such thing as I remember.

Q. Anybody else say that at the meeting?

A. Well, I think Mr. Randall said something—something like it—I could not say the words.

Q. Did Mr. Gilbert say, "Have you had anything to say as to whether we should go into this war?" Did he use that language?

A. Not that I can remember.

Q. Did he say, "Why, you know we have not."

A. Not that I can remember.

Q. Did he say, "If this is such a great democracy, for Heaven's sake,

why should we not vote on conscription of men?" Did he say that?

A. I can't remember he said that either.

Q. Did he use the words, "For Heaven's sake" at any time during that speech?

A. I don't think he did.

Q. That is your best recollection?

A. Yes.

Q. Did he say, "We were stampeded into this war by newspaper not to pull England's chestnuts out of the fire for her?"

A. No, I can't remember he stated that either.

Q. Did he say this, "I tell you if they conscripted wealth like they have conscripted men this war would not last over forty-eight 203 hours." Did he say that?

A. No.

Q. What do you remember Mr. Gilbert said?

A. I remember of a lot of it; I remember he said he was talking about how the League was succeeded in North Dakota and he was talking about Congressman Baer they elected on the Non-partisan platform and that he got more votes than all his opponents together and I remember he said—I can't state it verbatim—if they mobilized the resources of the country, the material and the resources of the country, that is, flour mills, packing plants, stock yards, ammunition plants, transportation facilities, that power, and by so doing it would —we could win the war easier.

Q. Did he say anything about President Wilson in his main talk?

A. I can't remember that he did say anything about President Wilson in his main talk.

Q. Do you remember anything else that he said?

A. No, I don't remember anything else; there was some questions or some remarks said there.

Q. Just state what you remember of those remarks?

A. Well, somebody made the remark, "Why," they said, "he was a pro-German"—or whether they said he made a pro-German speech I can't state, but another one made a remark he was an Englishman and Gilbert, he said, "Why, the idea of saying an Englishman made a pro-German speech, that is a joke." That is 204 what Gilbert said; and somebody asked him, "What is the matter with President Wilson?" and at that Gilbert said, "I don't know; do you?" Another fellow again asked, "What is the matter with our Government?" and Gilbert, he says, "Our government is all right."

Q. Do you remember anything else that was said by Mr. Gilbert in regard to the war or the platform of the League in regard to the war?

A. No, I cannot remember anything that he said, anything about the war, any more than what I have stated.

Q. Did he say anything about democracy in the war?

Objected to as leading and suggestive.

Objection sustained.

Exception.

Q. Did Dr. Gates, of Kenyon, say anything at this meeting?

A. Not that I know of; of course I did not know who was making these questions or these remarks—I think Mr. Gilbert asked for—would not say he asked for Gates—he asked for the "Doctor," he asked for the "Doctor."

Q. Do you remember what Mr. Gilbert said at that time?

A. No; I do not, but I think he asked for the Doctor; I did not know, I could not say what Doctor he meant.

Q. You talked to Dr. Gates about this meeting?

205 A. I did, afterwards.

Q. What did you say at that time or what did he say?

Objected to; no foundation laid and immaterial.

Objection sustained.

(No cross-examination.)

DR. GEORGE H. OVERHOLD, being first duly sworn, testified as follows:

Examined by Mr. Nordlin:

Q. Your name is?

A. George H. Overhold.

Q. What is your profession?

A. Physician.

Q. How old a man are you?

A. Seventy-six.

Q. Where were you born?

A. Ontario, Canada, near Niagara Falls.

Q. You live at the present time at Kenyon, Minnesota?

A. Kenyon, Minnesota.

Q. How long have you lived there?

A. Forty years.

Q. You hold some official position there, don't you?

A. I am Justice of the Peace.

Q. Did you hear the Nonpartisan speeches at Kenyon on the 18th of August last year?

A. I did hear the greater part of the speeches that night.

206 Q. Did you hear Mr. Gilbert talk at that meeting?

A. Yes.

Q. Do you remember what he said?

A. Very little; I did not think that anything would arise from it and simply heard him speak.

Q. Was there any interruption of any kind while he spoke at that time?

A. I think about at the termination of his speech there was an interruption.

Q. Do you remember what was said during that interruption?

A. Somebody cried out, "You're a pro-German."

Q. Go ahead and state as far as you can recollect just what was said there on that—

A. He said, "I am no pro-German; come up here on the stand

and let us reason this thing out and show me the reason I am pro-German"—something like that—not precisely the words, but substantially.

Q. Did you hear Mr. Gilbert state that he was opposed to conscription or anything of that kind during his talk?

A. No, I did not.

Q. You have no recollection?

A. I heard him say he was an Englishman and he said it was a singular thing to see an Englishman a pro-German.

Mr. Nordlin: This witness has been offered solely to testify as to the latter part of Mr. Gilbert's talk in the evening; the Court is going to limit the number of witnesses and we don't wish to have him considered as having testified with reference to the testimony in chief as to the speech itself.

(No cross-examination.)

C. F. SMITH, being first duly sworn, testified as follows:

Examined by Mr. Nordlin:

Q. What is your full name?

A. Clarence Frank Smith.

Q. How old are you?

A. Thirty years.

Q. Where do you live?

A. Kenyon, Minnesota.

Q. How long have you lived there?

A. Fourteen years.

Q. Where did you live before that?

A. Town of Richland.

Q. Where were you born?

A. Town of Richland.

Q. Is that in this County?

A. Rice County.

Q. What is your business?

A. Mechanic.

Q. You work where?

A. In Kenyon, for the Farm Implement Company.

Q. Were you in Kenyon on the 18th of August last year?

A. I was.

208 Q. In the evening?

A. Yes.

Q. You heard certain of the Nonpartisan League orators make speeches at that place?

A. I did.

Q. Did you hear Mr. Gilbert talk?

A. I did.

Q. Did you hear all his talk?

A. I did, sir.

Q. I will ask you if during Mr. Gilbert's talk he at any time said, "We are going over to Europe to make the world safe for

democracy but I tell you we had better make America safe for democracy first." Did he use that language or anything like that language during his talk?

A. I don't remember.

Q. You don't remember anything of that kind—nothing that had any connection with it?

A. No, sir.

Q. Or any similar to it?

A. No, sir.

Q. I will ask you if he used this language in substance or in words, "You say what is the matter with our democracy? I tell you what is the matter with it. Have you had anything to say as to who should be our President? Have you had anything to say as to who should be governor of this state?" Did he use that language?

A. No, sir.

Q. Or anything in substance like that?

A. No.

209 Q. Or anything that in any way resembled that?

A. Not to my knowledge?

Q. Or recollection?

A. No, sir.

Q. Did he say this, "Have you had anything to say as to whether we should go into this war?"

A. No.

Q. Did he say anything that resembled that?

A. Well, the only thing I remember was him talking about Congressman Baer and talking about this conscription of men, they should conscribe the mills and factories and that would end the war sooner.

Q. If they conscribed the factory and material resources of the country; you remember he said that?

A. Yes, sir.

Q. Do you remember; did he use language like this or this in substance, "If this is such a great democracy, for Heaven's sake why should we not vote on conscription of men?"

A. Not that I remember.

Q. Did he say anything like that?

A. Not that I can remember.

Q. Did he say this or anything like this, "We were stampeded into this war by newspaper rot, to pull England's chestnuts out of the fire for her?"

A. No, sir.

Q. You are positive he did not say that?

A. Positive.

210 Q. "I tell you if they conscripted wealth like they have conscripted men this war would not last forty-eight hours?"

A. No, sir, he did not.

Q. What else do you remember of his speech?

A. I remember towards the end of the speech when they hollered,

"What is the matter with Wilson," and Gilbert says, "I don't either, do you, I don't know as there is anything wrong with him."

Q. What else do you remember?

A. That is about all I remember.

Q. You say you remember Gilbert referring to Congressman Baer?

A. Yes.

Q. Do you remember anything else he said in that connection?

A. I do not.

Q. Did he refer to President Wilson?

A. I don't remember.

Q. Was there any disturbance at this meeting during the time that Gilbert spoke?

A. No, not particularly.

Q. What do you mean by that?

A. Just towards the last when they hollered, "What is the matter with Wilson," that is the only disturbance there was there.

Q. By that you mean the only natural disturbance there was there?

A. Yes.

Q. That was the only kind of disturbance you heard?

211 A. Well, they asked the "Doctor" to come up and make some remarks if he wanted to.

Q. Who asked him?

A. Mr. Gilbert; I could not say for sure now; my recollection is that Mr. Gilbert invited him up there if he wanted to make any questions.

Q. Was the invitation accepted?

A. It was not.

Q. Was there any disturbance of any kind during the main talk of Mr. Gilbert?

A. There was not with the exception of an automobile going by occasionally.

Cross-examination.

By Mr. Mohn:

Q. You say there was an automobile going by occasionally?

A. Yes.

Q. Where were you standing?

A. On the running board of Art. Condon's automobile; that particular part of the speech—I was at several places; was on the northeast corner of the band stand on the sidewalk.

Q. You were moving back and forth?

A. I was back and forth during the speech, different places.

Q. Talking with people?

A. No, not particularly; listening.

Q. You were talking with people too, were you not?

A. "Good evening," and different things.

212 Q. How long did you stand on the running board?

A. I could not tell you how long I stood there; for some little time.

Q. Was that during the latter part of the speech?

A. No; that was during the first part of the speech.

Q. Do you think you stood there ten minutes or something like that?

A. Probably.

Q. And there was quite a crowd around the band stand at the time, wasn't there?

A. There was.

Q. All around it?

A. Well, I would not say as to all round it because I was not all round it myself.

Q. How many people were around the band stand when Gilbert spoke?

A. I could not tell you and I am a poor hand at guessing.

Q. Two or three hundred people?

A. I would not say.

Q. They were all around listening?

A. There were people all around before the speech.

Q. Constantly moving back and forth; some were talking I suppose?

A. Yes, I suppose the same . . . listening to the speech.

Q. Moving from place to place?

213 A. Some of them, I suppose, as it would be natural.

Q. Where was this car standing?

A. On the east side of the band stand towards the street; the southeast corner.

Q. Southeast corner, which side of the street?

A. On the north side of the street facing west.

Q. The car was facing west?

A. Yes.

Q. And in between that car and the band stand those people were standing and listening? Listening to the speaker?

A. There were a few, not many.

Q. About how many? The whole side?

A. Probably a dozen or fifteen or eighteen.

Q. Just a dozen or fifteen or eighteen?

A. Somewhere along there.

Q. How many people were around that band stand?

A. I have no idea—there was quite a crowd.

Q. Quite a crowd all around it?

A. I was not all around it so I could not tell.

Q. Was there anybody there on the running board of the car on which you were standing?

A. I think there was some—

Q. Do you know?

A. No, I do not.

Q. How far was that car away from the people that were standing around the band stand?

A. I don't recollect exactly how far—rather close by, that is, ten feet to the band stand.

214 Q. And these people were standing in between the band stand and the car, those who were there?

A. Some standing between, some outside; that is as far as seen it.

Q. Do you know Mr. Oscar Buka of the Village of Kenyon?

A. I do.

Q. Do you remember when one Phillip Paulson, an American soldier was reported dead in the Village of Kenyon a short time ago?

Objected to as incompetent, irrelevant and immaterial.

Objection sustained.

Mr. Mohn: I am going to show the motive and feeling of this witness; this is a preliminary question.

Q. Did you hear a report that one Phillip Paulson, an American soldier, was reported dead in France?

A. Yes, I heard that report.

Mr. Nordlin: I move that be stricken out and object to the question as incompetent, irrelevant and immaterial.

Objection overruled.

Exception noted.

Q. You were opposed to the United States going into this war, were you not?

A. I was at first and so was President Wilson.

Mr. Mohn: I move that part of the answer be stricken out.

The Court: That part is not responsive.

215 Mr. Nordlin: I understand Your Honor has to be engaged elsewhere on Monday; we have a number of witnesses I have not examined and I would like to have a recess at this time until half past one o'clock. I think the result of that will be we will put on only the defendant.

The court then took an adjournment until 1:30 P. M.

1:30 P. M. Court resumed.

JOSEPH GILBERT, being first duly sworn, testified as follows:

Examined by Mr. Nordlin:

Q. What is your full name?

A. Joseph Gilbert.

Q. How old are you?

A. Fifty-three in July.

Q. Where were you born?

A. London, England.

Q. How long were you in England?

A. I left England in January 1884.

Q. You were how old at that time?

A. Nineteen.

Q. Your relatives are in England, are they?

A. I have brothers and sisters there.

Q. What education did you get?

A. I received a common school education in England; I worked at the age of fourteen; educated myself after coming to America.

Q. Went to work at the age of fourteen; what were you doing?

216 A. Worked in a carpet factory.

Q. And were you so employed until you came to this country?

A. Yes.

Q. Where did you settle when you came to the United States?

A. Philadelphia.

Q. How long did you live there?

A. Sixteen years.

Q. Are you a citizen of the United States?

A. Yes, I took out my second papers in 1894.

Q. When did you take out your first papers?

A. 1880.

Q. What was your age at that time?

A. Twenty-four or twenty-five when I took out my first papers; twenty-nine when I took out my second papers.

Q. How were you employed in Philadelphia?

A. Greatest part of the time at designing carpets and rugs; I was the head designer seven years.

Q. Were you otherwise employed while you were designing carpets?

A. I studied at night, became admitted to the Philadelphia Bar; afterwards practiced law in Philadelphia.

Q. How long?

A. For about five years; I left Philadelphia in 1900 and went to Seattle, Washington.

Q. How long were you there?

217 A. I worked in Seattle for a couple of years then went to Salt Lake City, Utah; afterwards from there to Chicago.

Q. What were you engaged at during that time from the time you left Philadelphia until today?

A. Part of the time I edited a paper, when I was at Seattle and Salt Lake City, and in Chicago I was manager of a corporation known as The Co-operative Merchants Company, an organization of some four or five hundred retail merchants for the purpose of collective buying; I was their manager; also edited their monthly—

Q. How long were you so engaged?

A. Three and a half years; then I acted as Secretary to Chambers of Commerce in Wisconsin, Kansas and Colorado.

Q. That, I believe, covers the period up to the time you became connected with your present employment?

A. Up to 1912 or just to the end of 1911; then I returned to Seattle and there I was engaged in conducting a printing establishment and editing a paper known as the Seattle Herald up until the time I came to the Nonpartisan League.

Q. What is your position with them?

A. I am what they call manager of the organization department; that is to say I have charge of the organizers, I have nothing to do with the officers or in determining the policies of the organization, but all organizers are under my control.

218 Q. You were in Kenyon on the evening of August 18th, 1917?

A. Yes, sir.

Q. From what point did you come to Kenyon?

A. Drove to Kenyon with an automobile from St. Paul.

Q. Was Kenyon your destination at that time?

A. No, I was en route to Plainview where I was to address the farmers on Sunday, the 19th.

Q. That was the occasion of your stopping at Kenyon?

A. The occasion was that L. W. Martin, one of the organizers, in that part of the country, Kenyon, requested someone to make an address and as I was going to be at Plainview on Sunday I suggested we drive round there myself and Mr. Randall and our wives and his little girl and that we would stop over at Kenyon where Mr. Randall was to make the regular organization speech; so I accompanied him; that is how I came to be in Kenyon on Saturday evening, August 18th.

Q. You went to this hotel stand or portable stage upon which the speakers were going to be made and got there about what time?

A. It must have been fully half past eight when we got there.

Q. Who introduced the speakers?

A. A gentleman by the name of Finstuen.

Q. He introduced Mr. Randall who spoke before you?

A. Yes.

Q. And then introduced you later?

219 A. Yes.

Q. Tell us just what you said with reference to the war in your speech?

A. Yes, sir. I stated to the audience that Mr. Randall had made a plain presentation of the organization and purposes of the Nonpartisan League and that he had shown them the necessity for organization if they ever hoped to achieve their desires and secure for themselves the whole fruits of their labor and that I would not touch upon that question at all but that as the all absorbing question before the public at this time was the war that I would make a short talk upon the attitude of the organization on the war. I referred to the fact that it was no secret where we stood because we had just passed through a Congressional campaign in North Dakota and had elected a member to Congress, John M. Baer, upon a platform setting forth the position of the Nonpartisan League towards the war. This platform was in the nature of resolutions which were adopted at meetings addressed by Mr. Baer during his campaign and adopted at these meetings and that was already in print. I referred to the fact that Mr. Baer, running on this platform, had secured more votes than all his five or six opponents combined. I said that in these resolutions occurred the words, I

quoted the words, "That we stand for our country, right or wrong as opposed to foreign governments with whom we are at war." I

then went on and made a statement, "according to the words 220 of President Wilson we are fighting to make the world safe for democracy and what does democracy mean? It means self-expression, that means the right of the people to determine the laws and conditions under which they shall live. In this country we had a political democracy; here we had the right to determine the conditions under which we shall live and there was never a more propitious time than the present for declaring what those conditions shall be because of the very necessities arising out of the fact that we are engaged in this great world conflict I stated that war, modern war involves many economical problems; that it takes more than men to fight wars, the men have to be fed and clothed and equipped and in order to conduct war we had to take into consideration these vast industries which were absolutely necessary—essential to the conduct of the war. That at the present time these industries were privately owned and privately controlled; that if it was right and proper to conscript men to fight that it was equally necessary to conscript the material means which enable them to continue to fight. I stated we should require our government to own such industries, such for instance as flour mills and packing plants, steel mills, munition factories, coal mines, transportation facilities; all these kind of things are equally necessary in conducting a war as are men and that it was our duty to do all we could to bring the greatest possible force or pressure to bear upon the situation in order that we might more surely end this war quickly. I said that what we

221 mean by industrial democracy, we meant by industrial democracy that the people themselves should have a voice in saying how these industries should be controlled, how they should be used; all these things were essential to the life of the nation and never more so than at the present time. I went on to say, for instance that in England, the most capitalistic country on the face of the earth, that they had had to change their ideas; that in England years ago had anybody spoke about such a thing as government owning or controlling railroads or mines or anything of that kind, it would have been scoffed at; I stated how it had risen out of the exigencies of war. England had found it absolutely necessary to control these things in the common interest of all the people and that we should pattern after her and do likewise here. That those were the things the Nonpartisan League stood for. I went on to say, quoting again from the resolutions, which I happened to have in my pocket.—I had the first typewriter copy from which these resolutions were printed in my pocket—and I quoted these words, "Patriotism demands service of all according to their capacity." When we conscribed men we took the flower of the nation, to lay down their lives if need be in defense of the nation, why should we not take the means to sustain these men in their fight then and those dependent on them at home, and that is what we stand for. Then I went on to show that at the present time the entire world

222 was in a state of great unrest and upheaval; that times would never be again after the war as they were at present; that the whole nature of our social and industrial lines was gradually changing and would become still more changed when these boys ^{came} back from the war; that they would not go back again into the old routine from which they had been taken, would not take up that same kind of life to which they had formerly been accustomed; that there was no doubt in my mind but what when people discovered, for instance, that the nation in a state of war found it necessary, found it for the best interests, to operate the great industries of the country they would claim the same right to do it in times of peace"—and it was along these general lines that I delivered my talk, and they were the burden the whole time of my talk.—

Objected to as calling for the conclusion of the witness.

Q. Is that what you said?

A. What I stated was this, "That we stand to mobilize the men and material—meaning by material the things which men had to use; those things that were needed to feed and clothe and equip the men—that we should mobilize all these forces of the nation to the end that we would win the war quickly, and that is what we mean by industrial democracy." I also stated to the farmers that unorganized they were helpless, as had been pointed out to them by the previous speaker, that by organization they were able to exert a power which otherwise it would be utterly impossible for 223 them to exert; that they should be organized so that they might get greater benefits for themselves and render greater service to the country in its hour of need than they could possibly do as scattered and isolated individuals. That is practically the ~~end~~ of talk I gave.

Q. I will ask you if at any time during your talk you made use of the following language, "We are going over to Europe to make the world safe for democracy, but I tell you we had better make America safe for democracy first?"

A. I did not.

Q. Did you use any language that could be construed to have that meaning?

A. No, sir. The closest, the nearest speech to that was in regard to quoting the words of President Wilson by saying, "In the words of President Wilson we are fighting to make the world safe for democracy and what does democracy mean?"—and I went on in that way.

Q. Did you use the language as follows, "You say what is the matter with our democracy, I tell you what is the matter with it. Have you had anything to say as to who should be our President? Have you had anything to say as to who should be governor of this state?"

A. That was not any part of my speech.

Q. Absolutely?

A. Absolutely foreign to my whole speech.

Q. Or anything similar to it?

A. Nothing whatever.

Q. Did you hear anything similar to that during the meeting?

224 A. Randall made those remarks or very similar?

Q. Did you make this statement, "Have you had anything to say as to whether we should go into this war? You know you have not?"

A. Never touched upon it at all.

Q. Or this, "If this is such a great democracy, for Heaven's sake why should we not vote on conscription of men?" Did you say that?

A. Never used any such expression.

Q. Or anything like it?

A. Never used any such expression.

Q. Did you use the following language, "For Heaven's sake," during your speech?

A. I never used that kind of phrase.

Q. Did you say this, "We were stampeded into this war by newspaper rot, to pull England's chestnuts out of the fire for her?"

A. No, nothing like that.

Q. Did you use any language like it?

A. Never.

Q. "I tell you if they conscripted wealth like they have conscripted men this war would not last over forty-eight hours?"

A. No, I did not.

Q. Did you say anything similar to it?

A. I used language which might be considered to be similar to it somewhat when I said, that if we would mobilize the men and industries that it would enable us to bring the war to a more speedy conclusion. I remember words to that effect.

225 Q. Which is not the same sentiment?

A. Oh, no.

Q. Did you say anything about petitioning Congress to conscribe wealth?

A. No.

Q. Did you say anything about if Congress conscribed wealth the war would end at once and that was the way to bring the war to a close?

A. No, sir; nothing like that.

Q. Did you say anything about sending collins to Europe?

A. No, never mentioned that—I did not know that they were sending them.

Q. Was there any interruption of any kind while you were making this speech you have referred to?

A. Absolutely none.

Q. Did you have certain talk or exchange of words with people in the audience at some time while you were there?

A. Yes.

Q. At what time was that?

A. Immediately upon the conclusion of my speech.

Q. Explain it?

A. Before I sat down someone called out, "Three cheers for Wilson, President Wilson." That was the first thing; that was immediately upon the close of my speech; the cheers were given; then another voice, maybe more voices for all I know, called out, "What is the matter with Wilson?" and I got up again and leaned 226 over the balustrade, looked down in the direction where the voice came from and I said, "Well, what is the matter with Wilson, I don't know anything the matter with him; do you?" And there was a little laugh. Then, immediately following that another gentleman in the audience said "You should have made that speech at New Ulm." I replied "I made it here." "What is wrong with it?" "Well, he said, it is seditious." I replied, "Will you tell me in what particulars it is seditious?" I said, "Come up on the platform here and tell the audience in what particulars it is seditious, this speech is seditious." And he would not do that but he replied it was pro-German, "you are a pro-German." I replied—I laughed and I says, "Why, that is a joke, who ever heard of an Englishman making a pro-German speech at this time?" Then there was a general laugh all over.

Q. Was there any disturbance of any kind while these interruptions were going on?

A. No; nor disturbance; merely questions back and forth—was not anything—

Q. Is there anything I have overlooked in my examination of you?

A. I would like to add that after I had stated that this must be a joke there was nothing further said, so I started then again by rather scorning the individual that made that accusation against me, and this is what I said. I said, "I am Englishman by birth and American by choice, of which fact I am proud. When I left England to come to this country, I came here because I hoped to better 227 myself, because I believed in the principles of the country;

I became a citizen; I took an oath of allegiance to this country; forswore all other allegiance to all other rulers, especially the Queen of Great Britain, and, after that, when I became a member of the Bar I took another oath to support this constitution; and having done that I have worked and fought for democratic ideals for the last twenty-five years and it comes with mighty poor grace of some individual to accuse me of being a pro-German. He would not have nerve enough to go up on that platform and tell the people in what particular I am seditious or pro-German." Then there was applause. As I came away Randall said to me, "Let me take this audience for a minute," and that was the last so far as I was concerned.

Q. There was nothing further?

A. There was no further disturbance. Mr. Randall spoke for a few minutes and said Good Night and we all walked off and went to the hotel and there was not a particle of disturbance, nobody spoke even, there was not any trouble of any kind; we had our wives with us and the little girl.

Cross-examination.

By Mr. Mohn:

Q. There was some disturbance there, however, towards the latter part of your speech?

A. Nothing more than that arose from questions and laughter.

Q. There was some disturbance in the crowd?
228 A. If you call laughter and asking questions "Disturbance" that was what there was.

Q. How long did you speak that evening?

A. Not more than twenty minutes; that is the speech itself was not more than twenty minutes—five or ten minutes in these questions and answers.

Q. In the first part of your speech you commended all Randall had said?

A. Certainly.

Q. And approved it?

A. Certainly. Mr. Randall spoke of nothing but the main purposes of the organization in that first speech; that is all he spoke about because it was understood between us that I should speak on the proposition of the relation of the league to the war.

Q. And you say that all that Mr. Randall spoke about was the objects and purposes of the League?

A. During his first talk, yes; that was all.

Q. Were you ever convicted of any crime?

A. Yes, of unlawful assembly in Justice Court in Jackson County.

By Mr. Nordlin:

Q. An Appeal was taken from this conviction in Justice Court to the District Court of Jackson County?

A. Certainly, yes.

Q. And is still pending?

A. Yes; that comes up on the 29th of this month.

229 Defendant rests.
State rests.

The Court here took a short recess, after which it resumed.

Mr. Nordlin: The defendant moves that the court instruct the jury that the defendant is not guilty. That there has been a failure on the part of the State to present evidence in this case which tends in any way to establish that the defendant is guilty of the offense charged. And that the defendant has established beyond any reasonable doubt that he is innocent of the offense charged. And that the State has failed to prove the offense alleged in the Indictment.

The Court: Motion denied.

Exception noted.

Charge of the Court.

Gentlemen of the Jury: In 1917, soon after the United States entered into war with Germany, the Legislature of this State was in Session. The Legislature found it necessary, and it did, enact a Statute, which it will be necessary for me to read to you in order that you may know what you are to decide in this case.

It is Chapter 463 of the Laws of 1917 and was adopted and approved April 20th, 1917. It reads, "It shall be unlawful from and after the passage of this Act for any person to print, publish or circulate in any manner whatsoever any book, pamphlet or written or printed matter that advocates or attempts to advocate that men should not enlist in the military or naval forces of the United

230 States or the State of Minnesota." That particular section of this Act does not apply to this case.

Section 2 reads as follows: "It shall be unlawful for any person in any public place, or at any meeting where more than five persons are assembled, to advocate or teach by word of mouth or otherwise that men should not enlist in the military or naval forces of the United States or the State of Minnesota."

Section 3 reads as follows: "It shall be unlawful for any person to teach or advocate by any written or printed matter whatsoever, or by oral speech, that the citizens of this State should not aid or assist the United States in prosecuting or carrying on war with the public enemies of the United States."

I take it from the reading of the whole Indictment that it is prosecuted under Section 3, which I have just read to you.

Under Section 4, the word "Citizen" is defined as follows, "A citizen of this State for the purposes of this act is hereby defined to be any person within the confines of the State."

Under this Statute the Grand Jury at the March Term of this Court, this year, returned an Indictment against the defendant Joseph Gilbert. In this Indictment the defendant, Joseph Gilbert, is accused of having violated the Statute which I have just read to you,

231 and it charges as follows: ["Joseph Gilbert is accused by the Grand Jury of the County of Goodhue, State of Minnesota, by

this Indictment of the crime of discouraging enlistment of men in the military and naval forces of the United States, and advocating that the citizens of the said State should not aid and assist the United States in prosecuting and carrying on war with the public enemies of the United States, committed as follows: The said Joseph Gilbert on the 8th day of August, A. D. 1917, at the Village of Kenyon, in the County of Goodhue, State of Minnesota, then and there being did, then and there, at a public place where more than five persons were then and there assembled), unlawfully and wilfully teach and advocate, by word of mouth and oral speech, that men should not enlist in the military and naval forces of the United States, and that the citizens of the State of Minnesota should not assist the United States in prosecuting and carrying on war with the public enemies of the United States, and said United States being then and there at

war with the Kingdom and Imperial Government of Germany, by then and there stating and expressing to and in the presence of Joseph A. Gates, Andrew Finstuen, Gilbert A. Flom, John A. Brady, Thomas A. Tassa, Charles Lindholm and Albert Hillstad, all being then and there citizens of the State of Minnesota, in substance and effect as follows, to-wit: We are going over to Europe to make the world safe for democracy, but I tell you we had better make America

safe for democracy first. You say what is the matter with our 232 democracy? I tell you what is the matter with it. Have you had anything to say as to who should be President? Have you had anything to say as to who should be governor of this state? Have you had anything to say as to whether we should go into this war? You know that you have not. If this is such a great democracy, for Heaven's sake why should we not vote on conscription of men. We were stampeded into this war by newspaper rot, to pull England's chestnuts out of the fire for her. I tell you if they conscripted wealth like they have conscripted men this war would not last over forty-eight hours."

The defendant in this case, as does every defendant in a criminal case where an Indictment is returned against him, has the right to demur to the Indictment; he has the right to enter a plea of "Not guilty," or a plea of "Guilty," just as he sees fit. In this case the defendant has entered a plea of "Not guilty." The issue in a criminal case is made up by the facts alleged in the Indictment on behalf of the State and by the plea of "Not guilty" on behalf of the defendant.

In this case and in every criminal case the burden rests upon the State to prove to the jury, by evidence beyond a reasonable doubt, that the defendant is guilty of the charge made against him in the Indictment and if the State has failed to so convince the jury the defendant must be acquitted.

233 In the determination of criminal cases there is a presumption which the jury will consider; that presumption exists in all criminal cases and it exists in this case and that presumption is that of the innocence of the defendant until such time as this presumption has been overcome by proof beyond a reasonable doubt of the guilt of the defendant of the charge made against him.

In the consideration of criminal cases the jurors are always told that if there is any reasonable doubt about the defendant's guilt he is entitled to an acquittal. The use of that term in the charge of the Court may require a little further definition of what that term means. The jury, no doubt, can form a very good opinion of what it means but the Supreme Court has approved a form of definition of that term which is the law, as far as we are concerned. "By reasonable doubt is not meant some mere possible or imaginary doubt, because everything relating to human affairs and depending on moral evidence is open to some possible or imaginary doubt. To remove all reasonable doubt from the minds of the jurors and to warrant a conviction the evidence must be such as to satisfy the minds and the consciences of the jurors of the existence of the facts necessary to be established to constitute the offense to a reasonable

and moral certainty and so convince the jurors that they would venture to act upon that conviction in matters of the highest concern and importance to their own interests; absolute certainty is not required. If there be that amount and kind of evidence that will so convince the jury that they would venture to act upon that conviction in matters of the highest concern and importance to their own interests remove all reasonable doubt and to warrant a conviction."

This action has been somewhat tedious; counsel have tried well, presented the facts to us. The duty of this Court is to tell this jury what the law is; the duty of the jury is to take the law from the Court as it gives it to the jury and the duty of the jury is to determine the facts. This is their special function. It is your duty in this case to determine the facts involved, the issues involved in it. The Court cannot determine these facts; attorneys cannot; witnesses cannot; you are the only persons who can decide what the facts are in this case. You have been empaneled here for that purpose. You have sat and listened and heard the evidence for that purpose and you are thus qualified to determine the facts and you must determine the facts from the evidence as given upon the witness stand and from nothing else. Any outside influences, any newspaper articles or any remarks or anything else that may have come to you you will not consider in determining this case but you will consider only the proof in the case and from that proof you will determine what the facts are. From the testimony as given there is a conflict in the proof. It is contended on the part of the State that Mr. Gilbert spoke the words charged in the Indictment.

It is contended on the part of the defendant, Gilbert, he did not speak those words, so there is a clear issue for you to determine. You are to determine what the fact is in regard to it.

You are to judge of the credibility of the different witnesses and the weight that you are to give to the testimony of each of the witnesses. You may take into account the apparent interest of the witness, his appearance and demeanor on the stand and the way he gives his testimony and all the facts and circumstances in determining where the truth lies.

Now, in this case, gentlemen, you will first determine whether or not the defendant spoke the words substantially as charged in this Indictment; it is essential that the State should prove this fact beyond a reasonable doubt. It is not essential that the State should prove the language in the literal or exact words; it will be sufficient if the State proves that the words charged were spoken substantially as alleged in the Indictment. If you should in this case arrive at the conclusion that the defendant did not speak the words charged in the Indictment that would be the end of the case and you will find him not guilty. If upon consideration of the evidence you find, and beyond a reasonable doubt, that he did speak those words substantially as charged in the Indictment, then you will determine the other question, whether or not by speaking such words he taught or advocated that men should not enlist in the military or naval

236 forces of the United States or that the citizens should not aid or assist the United States in prosecuting and carrying on war with its public enemies.

It may perhaps aid you to have the Court state to you some of the definitions, the recognized definitions of the words "teach" and "advocate." To "teach" means to impart knowledge of, to counsel, to tell, to instruct. To "advocate" means to plead in defense of, to defend by argument before a tribunal or the public and it means to support or vindicate.

You are instructed that in a prosecution of this kind it is not necessary to show that the defendant directly or expressly, in so many words or in any set words, taught or advocated that citizens should not aid or assist the United States in prosecuting the war or that men should not enlist in the military or naval forces of the United States, but the Statute would be violated if the natural and reasonable effect of the words spoken is to teach or advocate that citizens should not aid or assist the United States in its war with its public enemies or that men should not enlist in the military or naval forces of the United States, and in this case it is a question of fact for you to determine whether the words were spoken and if spoken whether or not by speaking them the defendant taught that men should not enlist or that men should not assist or aid the United States in the war. Those are questions of fact for this jury to determine.

Therefore, if you find from the evidence and beyond a reasonable doubt, that on the 18th day of August, 1917, at the Village of Kenyon, in this County, the defendant spoke the words, substantially as charged in the Indictment, to and in the presence of the persons therein named and that thereby defendant taught or advocated that the citizens of said state should not aid or assist the United States in prosecuting or carrying on war with the public enemies of the United States, you will find the defendant guilty of the crime charged in the Indictment, or if you should find from the evidence and beyond a reasonable doubt that at the time and place stated the defendant spoke the words substantially as charged in the Indictment to and in the presence of the persons named therein and that thereby he advocated or taught by word of mouth that men should not enlist in the military or naval forces of the United States, then you will find him guilty of the crime charged in the Indictment, and, on the other hand, if you do not find such facts, or if you find the defendant did not speak the words or find he did not teach or advocate that men should not enlist in the military or naval forces of the United States and find that he did not teach that citizens should not aid and assist the United States in prosecuting and carrying on war with the public enemies of the United States you will find the defendant not guilty.

I have been requested by the defendant to give you certain instructions; such as I read I will give you. "I charge you that before you can find the defendant guilty you must first find beyond a reasonable doubt that the defendant used substantially the language set forth in the Indictment." I have already given

you that in the general charge. "I charge you that the burden rests upon the State to prove beyond a reasonable doubt that the defendant spoke the words substantially as charged in the Indictment, and I further charge you that even though you should find beyond a reasonable doubt that said words were so spoken by defendant, you still cannot convict the defendant unless you are also satisfied beyond any reasonable doubt that by said words, so spoken, he advocated or taught that men should not enlist in the military or naval forces of the United States or of the State of Minnesota, or that said words so spoken, beyond any reasonable doubt, taught or advocated that the citizens of this state should not aid or assist the United States in prosecuting or carrying on war with the public enemies of the United States." "I charge you that you are to lay aside all bias or prejudice, if any there be in your minds, and determine this case solely upon the facts and the law as given by the Court."

I think those are all the instructions necessary for me to give you.

Mr. Nordlin: The defendant excepts to the refusal of the Court to give the requests to charge upon the part of the defendant, numbers 1 to 34, inclusive, and excepts to the charge of the Court as given to the jury in *toto*.

The jury having retired and afterwards returned, bringing 239 a verdict of "We, the Jury, in the above entitled action, find the defendant guilty in manner and form as charged in the Indictment." The counsel for the State moved for sentence at this time.

Mr. Nordlin: The defendant at this time makes a motion in arrest of judgment upon the following grounds:

1. That more than one offense is charged in the Indictment.
2. The facts stated in the Indictment do not constitute a public offense.
3. The Indictment contains matter which, if true, would constitute a legal justification or excuse for the offense as charged.

The Court: The motion may be entered and will be denied.

Exception Noted.

(Title of Cause.)

Verdict.

We, the Jury in the above entitled action, find the defendant guilty in manner and form as charged in the Indictment.

JOHN E. NORING,

Foreman.

Dated at Red Wing, Minnesota, this 10th day of May, A. D. 1918.

Order.

Upon the affidavit of George Nordlin, one of the attorneys for appellant, hereto attached, and upon all the files and proceedings herein:

It Is Ordered that the above entitled action may be and is hereby remanded to the District Court of Goodhue County for the purpose of having a motion for a new trial made and heard therein, subject to hearing in this Court on November 25, 1918.

CALVIN L. BROWN,
Chief Justice.

Mr. Wilson's Request to Charge on Behalf of the Defendant.

"Gentlemen: The effect in this case of the words spoken by the defendant at the time and place charged in the Indictment rests in the memory of the several witnesses who have testified in behalf of the State. Such evidence should be considered by you with great caution and care because it is that character of evidence that is designated in the books as the weakest kind of evidence that can be produced and is oftentimes spoken of as the most unsatisfactory species of evidence and also that no portion of human testimony is more open to just doubt than that arising from conversations, from the frailty of human memory."

Defendant's Request for Charge.

1.

I charge you that before you can find the defendant guilty you must first find beyond a reasonable doubt that the defendant used the language set forth in said Indictment.

In the event that the Court refuses to give the foregoing instructions, we request the following:

2.

I charge you that before you can find the defendant guilty you must first find beyond a reasonable doubt that the defendant used substantially the language set forth in the Indictment.

3.

I charge you that there is no evidence in this case that the defendant in so many words or in substance stated that men

242 should not enlist in the military or naval forces of the United States or of the State of Minnesota.

4.

I charge you that there is no evidence in this case that the defendant in so many words or in substance stated that the citizens of this State should not aid or assist the United States in the prosecution or carrying on war with the public enemies of the United States.

5.

I charge you that the defendant had the right to criticize the existing laws, point out their defects, injustice and unwiseom, that he had the right to advocate their repeal.

6.

I charge you that the defendant had the right freely to discuss all public measures, to expose their defects and urge their alteration or repeal by legal methods, to criticize the constitution and the laws and advocate their amendment and to censure, however severely, if only it be fairly, upon the conduct of the officers of the government.

243

7.

Gentlemen of the jury, I charge you that if you find that the words spoken by the defendant were words criticizing existing laws, pointing out any defects therein, or the injustice and unwiseom thereof, and advocating their amendment or repeal, then I charge you that the defendant is entitled to acquittal.

In the event the Court refuses to give the foregoing instructions, we request the following:

8.

Gentlemen of the jury, I charge you that if you find that the words spoken by the defendant were words criticizing existing laws, pointing out any defects therein or the injustice and unwiseom thereof, and advocating their amendment or repeal, then I charge you that the defendant is entitled to acquittal, unless said defendant at the same time and place taught or advocated resistance to any law of this state or of this land.

9.

I charge you that there is no evidence in this case that the language which is imputed to the defendant by the witnesses for the state advocated or taught that men should not enlist in the military or naval forces of the United States or of the state of Minnesota, nor

244 does said imputed language by any inference tend to advocate or teach that men should not enlist in the military or naval forces of the United States or of the state of Minnesota.

And in the event the Court refuses to give the foregoing instruction, we request the following:

10.

I charge you that the burden rests upon the state to prove beyond a reasonable doubt that the defendant spoke substantially the words as charged in the Indictment and I further charge you that even though you should find beyond a reasonable doubt that said words were so spoken by defendant, you still can not convict the defendant unless you are also satisfied beyond any reasonable doubt that said words so spoken advocated or taught that men should not enlist in the military or naval forces of the United States or of the State of Minnesota.

11.

I further charge you that the burden is upon the state to prove beyond any reasonable doubt, not only that the words substantially charged in said indictment were so spoken by said defendant, but also in order to convict this defendant you must be satisfied beyond any reasonable doubt that said words so spoken, taught or advocated that the citizens of this state should not aid or assist the 245 United States in prosecuting or carrying on the war with the public enemies of the United States.

In the event that the Court refuses to give the foregoing instruction, we request the following:

12.

I charge you that the burden rests upon the State to prove beyond a reasonable doubt that the defendant spoke substantially the words as charged in the indictment, and I further charge you that even though you should find beyond a reasonable doubt that said words were so spoken by defendant, you still cannot convict the defendant unless you are also satisfied beyond any reasonable doubt that by said words so spoken he advocated or taught that men should not enlist in the military or naval forces of the United States or of the State of Minnesota, or that said words so spoken, beyond any reasonable doubt, taught or advocated that the citizens of this state should not aid or assist the United States in prosecuting or carrying on war with the public enemies of the United States.

13.

I charge you in this case that before you can convict the defendant you must not only be satisfied beyond a reasonable doubt that the

246 said defendant spoke substantially the words which are charged in said indictment, but you must be further satisfied beyond a reasonable doubt that said words, if so spoken by said defendant, did discourage enlistments of men in the military or naval forces of the United States, or did teach and advocate that the citizens of the state should not so enlist, and if you have a reasonable doubt as to whether or not such words did discourage such enlistments, or did teach and advocate that the citizens of this state should not aid or assist the United States in prosecuting or carrying on war with the public enemies of the United States, then I charge you that it is your duty to acquit the defendant.

14.

I further charge you that if, upon a consideration of all the evidence under the law which I have given you, there is in your mind a reasonable doubt as to whether or not the words used by the defendant if you find such words to be used, taught or advocated that men should not enlist in the military or naval forces of the United States or the State of Minnesota, that it is your duty to acquit the defendant.

15.

247 I further charge you that if, upon a consideration of all the evidence under the law which I have given you, there is in your mind a reasonable doubt as to whether or not the words used by the defendant, if you find such words to be used, taught or advocated that the citizens of this state should not aid or assist the United States in prosecuting or carrying on war with the public enemies of the United States, that it is your duty to acquit the defendant.

In the event that the court refuses to give the foregoing instruction we request the following:

16.

I further charge you that if, upon a consideration of all the evidence under the law which I have given you, there is in your mind a reasonable doubt as to whether or not the words used by the defendant, if you find such words to be used, taught or advocated that men should not enlist in the military or naval forces of the United States or the State of Minnesota, or that the citizens of this state should not assist or aid the United States in prosecuting or carrying on war with the public enemies of the United States, that it is your duty to acquit the defendant.

17.

I charge you in this case that before you can convict the defendant you must not only be satisfied beyond a reasonable doubt that the said defendant spoke substantially the words which are charged in said indictment, but you must be further satisfied beyond a reasonable doubt that the said words, as so spoken by said defendant, did discourage the enlistment of men in the military or naval forces of the United States, and if you have a reasonable doubt as to whether or not such words did discourage such enlistments, then I charge you that it is your duty to acquit the defendant.

18.

In the determination of this case, you are to be guided solely by the evidence allowed by the Court and the law as given to you by the Court. You are not to be influenced by any articles which you may have, if any, read in the newspapers, nor by anything you may have heard during the progress of this trial, other than the evidence allowed by the Court and the law as given to you by the Court.

19.

I charge you that you are to lay aside all bias or prejudice if any there be in your minds, and determine this case solely upon the facts and the law as given you by the Court.

20.

If upon a consideration of all the evidence, there is in your minds as reasonable men, a reasonable doubt as to whether or not 219 the state has failed to prove one or more of the essential elements of the offense charged, then I charge you, it is your duty to find a verdict for the defendant, though the state may have proven a portion of the elements necessary to constitute the offense beyond a reasonable doubt, but has failed to prove all of the essential elements beyond a reasonable doubt necessary to constitute the offense charged.

21.

It is not sufficient that you may think or guess or presume that the defendant is guilty, but the proof necessary to warrant a conviction in this case must be of such a nature that it satisfies the minds and conscience of the jury beyond any reasonable doubt that the facts essential to constitute the offense charged have been proven beyond a reasonable doubt.

22.

I charge you that the defendant had the right to criticize the existing laws, point out their defects, injustice and unwiseom, that he had a right to advocate their repeal.

23.

I charge you that under the law no jury should convict a citizen or citizens of crime upon mere suspicion, however strong, or 250 simply because there is a preponderance of all the evidence in the case against him, or simply because there is a strong reason to suspect that he is guilty; but before the jury can lawfully convict, you must be convinced of the defendant's guilt beyond all reasonable doubt.

24.

I further charge you that the law does not require defendant to prove himself innocent, but the law imposes upon the state the burden of proving that the defendant is guilty in manner and form as charged in the indictment to the satisfaction of the jury beyond all reasonable doubt and unless the state has done so, you should find the defendant not guilty.

25.

I further charge you that the indictment in this case is merely an accusation against the defendant and is not of itself any evidence of defendant's guilt and no juror in this case should permit himself to be to any extent influenced against the defendant because of or on account of the indictment in this case.

251

26.

I further charge you that the presumption of innocence which the law gives to the defendant is not a mere form to be disregarded by the jury at pleasure; but it is an essential, substantial part of the law of the land and binding on the jury in this case, and it is the duty of the jury to give this defendant the full benefit of this presumption and to acquit the defendant unless the evidence in this case convinces you of his guilt as charged beyond all reasonable doubt.

27

I further charge you that your personal opinion as to facts not proved on the trial can not be considered as the basis of your verdict. You may believe as men that certain facts exist, but as jurors you can only set upon evidence introduced upon the trial, and from that and

that alone you must form your verdict unaided, unassisted and uninfluenced by any opinions or presumptions not founded upon the testimony.

28.

I charge you that it would be highly improper and wrong for you to regard any statements of the prosecuting attorney that are 252 not based upon the evidence in the case, in any such have been made, as entitled to any weight in this case.

29.

I charge you that if any allusions or inferences have been made by the prosecuting attorney to the supposed dangerous character of any views entertained or the principles contended for by defendant that this should in no way influence or prejudice your minds against the defendant in this case; your duty is discharged when you have determined his guilt or innocence of the charge contained in this indictment and there is no other question involved in this case.

30.

I charge you in this case that it is incumbent upon the state to prove that the defendant *is* speaking the words spoken at the time and place in question did so with the intent and purpose of teaching and advocating that men should not enlist in the military or naval forces of the United States or of the State of Minnesota, and if upon a consideration of all the evidence there is in your minds a reasonable doubt whether or not such words as were spoken by the defendant were spoken with such intent, then I charge you that the defendant cannot be convicted.

253

31.

I charge you in this case that it is incumbent upon the state to prove that the defendant *is* speaking the words spoken at the time and place in question did so with the intent and purpose to teach or advocate that the citizens of this state should not aid or assist the United States in prosecuting and carrying on war with the public enemies of the United States, and if upon such a consideration of all the evidence, there is in your minds a reasonable doubt whether or not such words as were spoken by the defendant were spoken with such intent, then I charge you that the defendant cannot be convicted.

32.

The law presumes the defendant to be innocent of the crime charged and this presumption continues in his favor throughout the trial, step by step; and you cannot find the accused guilty of any of

the crimes charged in the indictment until the evidence in the case satisfies you beyond a reasonable doubt of his guilt. And as long as any of you have a reasonable doubt as to the existence of any one of the several elements necessary to constitute the offence charged, the accused cannot be convicted.

25.

able doubt inconsistent with any hypothesis of innocence that can be reasonably drawn from the evidence.

34.

The jury are instructed that the law presumes the defendant innocent in this case and not guilty as charged in the indictment unless the contrary is proved, and this presumption should continue and prevail in the minds of the jury until they are satisfied by the evidence beyond all reasonable doubt of the guilt of the defendant and acting upon this presumption the jury should acquit this defendant unless constrained to find him guilty by the evidence convincing them of such guilt beyond all reasonable doubt.

35.

The evidence sufficient to convict this defendant beyond a reasonable doubt would be the same kind, nature and extent of evidence which would be sufficient to convict this defendant of the crime of murder, if he was charged with that offense.

Order Settling Case.

Having examined the foregoing transcript and found the same conformable to the truth, the said transcript, together with the exhibits received in evidence, is hereby allowed as and for the 255 settled case herein.

ALBERT JOHNSON,
District Judge.

(Title of Cause.)

Motion to Vacate the Verdict and Judgment or for a New Trial.

To Thomas Mohn, Attorney for the State, Red Wing, Minnesota:

You are hereby notified that the defendant above named, Joseph Gilbert, will move the Court at the Court House at Red Wing, Goodhue County, Minnesota, on Thursday, the 10th day of October, 1918, at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for an Order vacating the verdict and judgment herein and granting the defendant a new trial of this action upon the following grounds:

I.

Because the verdict is not justified by the evidence.

II.

Because the said verdict is contrary to law.

256

III.

Because of errors in law occurring at the trial and duly excepted to by said defendant at the time.

IV.

Because of errors of law occurring at said trial and hereby excepted to and specifically stated and assigned to-wit:

(a) The Court erred in overruling the objections of the defendant to the following interrogatories:

Q. You have a boy in the first draft?

A. Yes.

Q. What is his name?

A. John Wollaker.

Objected to as wholly immaterial (Trans., page 106).

(b) The Court erred in overruling defendant's motion for dismissal at the close of the state's case (Trans., page 163).

(c) The Court erred in sustaining the objection of the state to the following interrogatory and answer:

Q. Was any statement similar to that made at that meeting?

A. Mr. Randall made that statement in his first speech or a statement similar to it—

Objected to.

Objection sustained (Trans., page 167).

257 (d) The Court erred in overruling the objections of the defendant to the following interrogatories:

Q. You did not buy any of the first issue of Liberty Bonds?

Objected to as immaterial.

Objection overruled (Trans., page 172).

(e) The Court erred in denying the motion in arrest of judgment (Trans., page —).

(f) The Court erred in overruling defendant's request that the state be required to elect as to which section of Chapter 463 of the Laws 1917, it intended to prosecute under (Trans., page —).

You are further notified that at the hearing of said motion all the files and records of said Court will be used and said motion will be made on the settled and allowed case herein, and that a proper stay of proceedings herein will be asked.

Yours truly,

GEORGE NORDLIN,
Attorney for Defendant,
705 Pioneer Building, St. Paul, Minn.

Order.

The Court having heard and considered defendant's motion for an order vacating the verdict and judgment herein and granting the defendant a new trial of this action.

258 It is ordered that the said motion be and hereby is in all respect denied.

Dated at Red Wing, Minnesota, this day of October 22nd, 1918.

ALBERT JOHNSON,
District Judge.

Notice of Appeal.

To Messrs. Thomas A. Mohn, County Attorney, and Clifford L. Hilton, Attorney General, Attorneys for the State:

Please take notice that the above named defendant-appellant appeals to the Supreme Court of the State of Minnesota from the judgment and the whole thereof entered in the above entitled action on the 11th day of May, 1918.

Dated July 15th, 1918.

GEORGE NORDLIN AND
THOMAS V. SULLIVAN,
Attorneys for Defendant,
St. Paul, Minn.

EXHIBIT 1.

Non-Partisan Mtg. Aug. 18

Randal—The rot that is being pulled of by our govt now 259 days with reference to the war is something so disgraceful that you have no idea of it. If the money of the rich were thrown into the war chest it would end immediately.

Gilbert—We are going over to Europe to make the world save for Dem, but I tell you we better make Am. safe for Dem. 1st. matter with it. Gov - Pres - war—we were stampeded into war by newspaper rot to pull Englands Chestnuts out of the fire for her—

EXHIBIT 2.

Complaint.

STATE OF MINNESOTA,
County of Goodhue:

On this 11th day of January, A. D., 1918, personally came before me, the undersigned, one of the Justices of the Peace for said County, John Wallaker, who being first duly sworn, on his said oath, complains and says: That heretofore, to-wit, on the 18th day of August, A. D. 1917, at and within the said County of Goodhue, and State of Minnesota, Louis W. Martin did, unlawfully and wrongfully, discourage enlistment of men in the military and naval forces of the United States, and advocate that the citizens of said state should not aid and assist the United States, in prosecut-

260

33.

I charge you that the evidence necessary to convict the accused must not merely be beyond all reasonable doubt consistent with the hypothesis of his guilt, but it must also be beyond all reasoning and carrying on war with the public enemies of the United States, committed as follows:

That said Louis W. Martin, on the 18th day of August, A. D. 1917, at the village of Kenyon, in the County of Goodhue, State of Minnesota, then and there being, did, then and there, at a public place where more than five persons were then and there assembled, unlawfully and wilfully teach, advocate and counsel by word of mouth and oral speech, that men should not enlist in the military and naval forces of the United States, that the citizens of Minnesota, should not aid or assist the United States in prosecuting and carrying on war with the public enemies of the United States, said United States being then and there at war with the Kingdom and Imperial Government of Germany, by then and there stating and expressing, to and in the presence of Joseph A. Gates, Andrew Finstuen, Gilbert A. Flom, John A. Bradley, Thomas Tassa, Charles Lindholm and Albert Hilstad, all being then and there, citizens of the State of Minnesota, in substance and effect as follows, to-wit:

261 We are going over to Europe to make the world safe for democracy, but I tell you that we had better make America safe for democracy first. You say what is the matter with our democracy; I tell you what is the matter with it. Have you had anything to say as to who should be President? Have you had anything to say as to who should be Governor of this State? Have you had anything to say as to whether we should go into this war? You know you have not. If this is such a great democracy for Heaven's sake why should we not vote on conscription of men? We were stampeded into this war by newspaper rot, to pull England's chestnuts out of the fire for her. I tell you if they conscripted

wealth like they have conscripted men this war would not last over forty-eight hours. The rot that is being pulled off nowadays, by our Government with reference to this war is something so disgraceful that you have no idea of it. If the money of the rich were thrown into the war chest, this war would end immediately. We must save food for the allies, they say, we must have food for them whether we get anything ourselves. This is what makes high prices. The President has too much power in this country and he used it to suit himself. Contrary to the form of Statute in such case made and provided, and against the peace and dignity of the State of Minnesota.

Wherefore, said affiant prays that a warrant may issue against the said Louis W. Martin and that he may be forthwith apprehended and dealt with according to law.

262 (Signed)

JOHN WALLAKER.

Subscribed and sworn to before me this 11th day of January, A. D. 1918.

(Signed)

C. H. UNHOLT,

Justice of the Peace, Goodhue County, Minn.

The within Complaint made and filed with me this 14th day of January, A. D. 1918.

(Signed)

S. J. NELSON,

Justice of the Peace, Goodhue County, Minn.

EXHIBIT 3.

Complaint,

STATE OF MINNESOTA,

County of Goodhue:

On this 11th day of January, A. D. 1918, personally came before me, the undersigned, one of the Justices of the Peace for said County, John Wallaker, who being by me first duly sworn, on his said oath, complains and says: That heretofore, to-wit, on the 18th day of August, A. D. 1917, at and within the said County of Goodhue and State of Minnesota, N. S. Randall did, unlawfully and wrongfully, discourage enlistment of men in the military and naval forces of the United States, and advocate that the citizens of said State 263 should not aid and assist the United States in prosecuting and carrying on war with the public enemies of the United States, committed as follows:

The said N. S. Randall on the 18th day of August, A. D. 1917, at the Village of Kenyon, in the County of Goodhue, State of Minnesota, then and there being, did, then and there, at a public place where more than five persons were then and there assembled, unlawfully and wilfully teach and advocate by word of mouth and oral speech that men should not enlist in the military and naval forces of the United States and that the citizens of the State of Minnesota

should not assist the United States in prosecuting and carrying on war with the public enemies of the United States, said United States being then and there at war with the Kingdom and Imperial Government of Germany; by then and there stating and expressing to and in the presence of Joseph A. Gates, Andrew Finstuen, Gilbert A. Flom, John A. Bradley, Thomas A. Tassa, Charles Lindholm and Albert Hilstad, all being then and there citizens of the State of Minnesota, in substance and effect as follows, to wit: The rot that is being pulled off nowadays by our government with reference to this war is something so disgraceful that you have no idea of it. If the money of the rich were thrown into the war-chest, this war would end immediately. We must save food for the Allies, they say; we must save food for them whether we get anything for ourselves. This is what makes high prices. The president of the United States 264 has too much power in this country and he uses it to suit himself, contrary to the form of statute in such case made and provided and against the peace and dignity of the State of Minnesota.

Wherefore, said affiant prays that a warrant may issue against the said N. S. Randall and that he may be forthwith apprehended and dealt with according to law.

JOHN WALLAKER.

Subscribed and sworn to before me this 11th day of January, A. D. 1918.

G. H. O. UNHOLT,
Justice of the Peace, Goodhue County, Minn.

The within Complaint made and filed with me this 5th day of February, A. D. 1918.

S. J. NELSON,
Justice of the Peace, Goodhue County, Minn.

Supreme Court of the State of Minnesota.

I, Herman Mueller, Clerk of the Supreme Court of the State of Minnesota, do hereby certify to the Honorable Edward D. White, Chief Justice of the United States Supreme Court, and to the other Honorable Justices of the said Honorable Court, that I have compared the foregoing Record of Appellant with original Record of the Appellant in the action therein entitled, as the same appears on file in said Clerk's Office at the Capitol in the City of St. Paul, Minnesota, and find the same to be a true and correct — thereof and of the whole thereof.

In witness whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at the City of St. Paul, Minnesota, this 6th day of March, A. D. 1919.

[Seal of the Supreme Court, State of Minnesota.]

HERMAN MUELLER,
Clerk of the Supreme Court of the State of Minnesota.

266 STATE OF MINNESOTA:

In Supreme Court.

STATE OF MINNESOTA, Respondent,

vs.

JOSEPH GILBERT, Appellant.

Petition for Stay of Execution of Sentence and Proceedings.

STATE OF MINNESOTA:

County of Ramsey, etc.

The undersigned, George Nordlin, being first duly sworn on oath deposes and says:—

That he is one of the attorneys for the above named defendant-appellant.

That on the 10th day of May, 1918, said defendant-appellant was found guilty of the crime of interfering with enlistments, by a jury in the District Court of Goodhue County, Minn.

That before judgment of sentence was imposed by said District Court this affiant on behalf of said defendant-appellant duly made and entered a motion in arrest of judgment which motion was by said court denied.

That George George, Esq., the official court reporter for said District Court who reported the proceedings and testimony in said action, has been ill and unable to furnish defendant-appellant with a transcript of the proceedings and testimony in said cause, although he has been paid for the same and said defendant-appellant is waiting for same in order to duly prepare a motion for a new trial in said action. That the District Court of Goodhue County has orally declined to grant a stay of execution of sentence in said District Court pending the determination of said motion for a new trial and appeal herein.

That the defendant-appellant has appealed from the judgment entered in said action, and from the whole thereof.

267 That upon all the files herein and upon the foregoing facts the defendant-appellant duly petitions this court to make its order staying execution of sentence in said District Court until the determination of said appeal from the judgment herein, and for such other relief as may be proper.

GEORGE NORDLIN.

Subscribed and sworn before me this 15th day of July, 1918.

[SEAL.]

J. D. HOOGESTEGEN,

Notary Public, Ramsey County, Minn.

My commission expires 5/18/22.

(Endorsed.)

Petition for Stay of Execution and Proceedings.

Filed July 18th, 1918.

L. A. Caswell Clerk.

268 STATE OF MINNESOTA:

In Supreme Court.

STATE OF MINNESOTA, Respondent,

vs.

JOSEPH GILBERT, Appellant.

Order.

Notice of appeal to the Supreme Court of the State of Minnesota from the judgment of the District Court of Goodhue County, State of Minnesota, having been duly served upon the attorneys for the state, and filed with the clerk of the District Court, of said Goodhue County, and upon petition and motion of the defendant.

It is ordered that a stay of execution of sentence in said District Court, Goodhue County, Minnesota, be and is hereby granted and entered until the determination by this court of defendant's appeal from the said judgment, upon defendant filing a bond according to law in the sum of \$2000 to be approved as to sureties and form by the Judge of the District Court of Goodhue County, Minnesota.

CALVIN L. BROWN,

Chief Justice.

Dated July 18, 1918.

The above stay is extended until January 4th, 1919, conditioned on defendant's maintaining in force the bond mentioned in the above order Dec. 27, 1918.

OSCAR HALLAM,
Associate Justice, Sup. Ct.

(Endorsed.)

Order.

Filed Jul. 18, 1918.

L. A. Caswell, Clerk.

292 STATE OF MINNESOTA:

In the Supreme Court, October, 1918, Term.

In Supreme Court,

vs.

JOSEPH GILBERT, Appellant.

STATE OF MINNESOTA,
County of Ramsey, etc:

George Nordlin, being first duly sworn, on oath deposes and says that he is one of the attorneys for the appellant in the above entitled action, that notice of appeal herein was served on the 15th day of July, 1918, that the time for serving and filing the record and appellant's brief herein expires the 13th day of September, 1918. Affiant further states that immediately after the return of the verdict in this action affiant ordered copies of the transcript of testimony and proceedings had therein and duly paid the reporter's fees therefor. That Owen George the official court reporter has been ill for a considerable time since the trial of said action and has stated to affiant that when able he has worked days and until late hours of the night in an endeavor to get out said transcript, which statement affiant believes to be true, inasmuch as this affiant has written several times requesting said transcript and has asked for the same by telephone communication and has made personal request for the same both in St. Paul, Minnesota, and at Red Wing, Minnesota, where said reporter resides.

That on the 7th day of September, 1918, said court reporter furnished to this affiant an incomplete transcript of the testimony and proceedings had in the above entitled matter. That it is impossible for the reporter to furnish the balance of said transcript and to correct errors in that part which has been furnished for a period of at least ten days.

That the part of the transcript which has been furnished consists alone of over 150 pages and it is impossible to have same printed before said 13th day of September, 1918.

That your affiant has used all possible diligence in the getting of said transcript in order that the record might be prepared and appellant's brief duly drawn.

Further affiant saith not, except that this affidavit is made in support of a motion to have the time for serving and filing the record and brief herein extended to the 15th day of October, 1918.

GEORGE NORDLIN.

Subscribed and sworn to before me this 9th day of September, 1918.

J. D. HOOGESTEGER,
Notary Public, Ramsey Co., Minnesota.

My commission expires 5/18/22.

James Manshard Law Office.

274 STATE OF MINNESOTA

In Superior Court, October, 1918, Term,

STATE OF MINNESOTA, Respondent,

v/s,

JOSEPH GILBERT, Appellant.

Order.

Upon the affidavit of George Nordlin, one of the attorneys for the appellant, hereto attached, and upon all the files and proceedings herein:

It is ordered: That the appellant may have up to and including the 9th day of October, 1918, in which to serve and file the printed record and appellant's brief herein.

Dated September 9th, 1918.

CALVIN L. BROWN,
Chief Justice.

2711.

[Endorsed.]

21080.

STATE OF MINNESOTA:

In Supreme Court.

STATE OF MINNESOTA, Respondent,

vs.

JOSEPH GILBERT, Appellant.

Order and Affidavit.

George Nordlin

and

James Manahan Law Offices,

James Manahan,

Thos. V. Sullivan,

J. D. Hoegesteger,

H. A. Paddock;

Attorneys.

Pioneer Building, St. Paul, Minnesota.

272 STATE OF MINNESOTA:

In Supreme Court, October, 1918, Term.

STATE OF MINNESOTA, Respondent,

vs.

JOSEPH GILBERT, Appellant.

STATE OF MINNESOTA,

County of Ramsey, as:

George Nordlin, being first duly sworn, on oath deposes and says that he is one of the attorneys for the appellant in the above entitled action, that notice of appeal herein was served on the 15th day of July, 1918, that the time for serving and filing the record and appellant's brief herein expires the 9th day of October, 1918. Plaintiff further states that immediately after the return of the verdict in this action plaintiff ordered copies of the transcript of the testimony and proceedings had therein and duly paid the reporter's fees therefor. That Owen George the official court reporter has been ill for a considerable time since the trial of said action and has stated to

affiant that when able he has worked days until late hours of the night in an endeavor to get out said transcript, which statement affiant believes to be true, in as much as this affiant has written several times requesting said transcript and has asked for the same by telephone communication and has made personal requests for the same both in St. Paul, Minn. and at Red Wing, Minnesota, where said reporter resides.

That a short time ago said reporter furnished to this affiant an incomplete and inaccurate transcript of the testimony and proceedings had in the above entitled matter. That it is impossible for the reporter to furnish the balance of said transcript and to correct errors in that part which has been furnished for a period of at least three (3) days.

That the part of the transcript which has been furnished consists of 200 pages and it is impossible to have same printed before the 10th day of October, 1918.

That your affiant has used all possible diligence in the getting of said transcript in order that the record might be prepared and appellant's brief duly drawn.

Further affiant saith not, except that this affidavit is made in support of a motion to have the time for serving and filing the record and brief herein extended to the 7th day of November, 1918.

GEORGE NORDLIN.

Subscribed and sworn to before me the 7th day of October, 1918.

MARY A. ENGEL,
Notary Public, Hennepin Co., Minn.

My commission expires the 18th of November, 1919.

(Endorsed.)

Order and Affidavit.

Filed Oct. 7th, 1918.

L. A. Caswell, Clerk.

273 STATE OF MINNESOTA:

In Supreme Court, October, 1918, Term.

STATE OF MINNESOTA, Respondent,

vs.

JOSEPH GILBERT, Appellant.

Order.

Upon the affidavit of George Nordlin, one of the attorneys for appellant hereto attached, and upon all the files and proceedings herein:

It is ordered: That the appellant may have up to and including the 7th day of November, 1918, in which to serve and file the printed record and appellant's brief herein.

Dated October 7th, 1918.

CALVIN L. BROWN,
Chief Justice.

STATE OF MINNESOTA:

In Supreme Court, October, 1918, Term.

STATE OF MINNESOTA, Respondent,

vs.

JOSEPH GILBERT, Appellant.

STATE OF MINNESOTA,
County of Ramsey, etc.

George Nordlin, being first duly sworn, on oath deposes and says that he is one of the attorneys for the appellant in the above entitled action; that notice of approval herein was served on the 15th day of July, 1918; that the time for serving and filing the record and appellant's brief herein expires the 7th day of November, 1918. Affiant further states that immediately after the return of the verdict in this action affiant ordered copies of the transcript of the testimony and proceedings had therein and duly paid the reporter's fees therefor.

That the greater part of said transcript was not delivered until within the last two weeks, and has not yet been fully corrected and completed by the said reporter, all of which is fully set forth in affidavits heretofore filed herein.

That the affiant has used all possible diligence to make a motion for a new trial in said action in the District Court of Goodhue County.

That the said District Court has designated the 14th day of October, 1918, as the time at which said motion shall be made.

Further affiant saith not except that this affidavit is made in support of a motion to have the above entitled action temporarily remanded by the Supreme Court to the District Court of Goodhue County, for the purpose of having said motion for a new trial made and heard by said District Court.

GEORGE NORDLIN.

Subscribed and sworn to before me this 14th day of October, 1918.

MARY A. ENGEL,
Notary Public, Hennepin Co., Minn.

My Commission expires Nov. 18, 1919.

(Endorsed.)

Order and Affidavit.

Filed Oct. 4, 1918. I. A. Caswell, Clerk.

274½ The District Court for the County of Goodhue and State of Minnesota, First Judicial District,

THE STATE OF MINNESOTA

against

JOSEPH GILBERT.

Indictment.

Joseph Gilbert is accused by the Grand Jury of the County of Goodhue, State of Minnesota, by this indictment of the crime of discouraging enlistment of men in the military and naval forces of the United States, and advocating that the citizens of said state should not aid and assist the United States in prosecuting and carrying on war with the public enemies of the United States, committed as follows:

The said Joseph Gilbert, on the 18th day of August, A. D., 1917, at the Village of Kenyon in the County of Goodhue, State of Minnesota then and there being, did, then and there, at a public place where more than five persons were then and there assembled, unlawfully and wilfully teach and advocate by word of mouth and oral speech that men should not enlist in the military and naval forces of the United States and that the citizens of the State of Minnesota should not assist the United States in prosecuting and carrying on war with the public enemies of the United States, said United States being then and there at war with the Kingdom and Imperial Government of Germany, by then and there stating and expressing to and in the presence of Joseph A. Gates, Andrew Finstuen, Gilbert A. Flom, John A. Bradley, Thomas A. Tasa, Charles Lindholm and Alfred Hilstad, all being then and there citizens of the State of Minnesota, in substance and effect as follows: to wit: We are going over to Europe to make the world safe for democracy, but I tell you we had better make America safe for democracy first, you say

275 what is the matter with our democracy. I tell what is the matter with it: Have you anything to say as to who should be President? Have you anything to say as to who should be Governor of this State? Have you had anything to say as to whether we should go into this war? You know we have not. If this is such a great democracy, for Heaven's — why we should we not vote on the conscription of men. We were stampeded into this war by newspaper rot to pull England's chestnuts out of the fire for her. I tell you if you conscripted wealth like they have conscripted men, this

war would not last over forty-eight hours, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Minnesota.

Dated at Red Wing, in the County of Goodhue, in the State of Minnesota, this 14th day of March, A. D. 1918.

H. P. HULEBAK,
Foreman of Grand Jury.

Witnesses Examined Before the Grand Jury.

Joseph A. Gates,
Andrew Finstuen,
John Wallaker,
Albert Hilstad.

(*Indictment.*)

A True Bill.

H. P. Hulebak, Foreman of Grand Jury.

Filed March 14th, 1918.

C. S. Dana, Clerk.

275¹2 STATE OF MINNESOTA:

In Supreme Court, October, 1918, Term.

STATE OF MINNESOTA, Respondent,

vs.

JOSEPH GILBERT, Appellant.

Order.

Upon the affidavit of George Nordlin, one of the attorneys for appellant, hereto attached, and upon all the files and proceedings herein:

It is ordered. That the above entitled action may be and is hereby remanded to the District Court of Goodhue County for the purpose of having a motion for a new trial made and heard therein, subject to hearing in this Court, November 25, 1918.

Dated October 14th, 1918.

CALVIN L. BROWN,
Chief Justice.

276 STATE OF MINNESOTA,

County of Goodhue, ss:

District Court, First Judicial District.

THE STATE OF MINNESOTA

vs.

JOSEPH GILBERT.

Demurrer.

Comes now the Defendant in the above entitled action and demurs to the indictment herein, upon the grounds that it appears from the race thereof.

1.

That more than one offense is charged in the indictment, and it is not a case where such is allowed by Statute.

2.

That the facts stated do not constitute a public offense.

Dated this 22nd day of March, 1918.

THOS. V. SULLIVAN AND
F. A. PIKE,

Attorneys for Defendant.
St. Paul, Minnesota.

(Endorsed.)

Demurrer.

Filed March 22nd, 1918.

G. S. Dana, Clerk.

277 STATE OF MINNESOTA,
County of Goodhue:

District Court, First Judicial District.

THE STATE OF MINNESOTA, Plaintiff,
against

JOSEPH GILBERT, Defendant.

We, The Jury in the above entitled action, find the Defendant
Guilty in manner and form as charged in the Indictment.

JOHN E. NORSWING,
Foreman.

Dated at Red Wing, Minn., this 10th day of May, A. D. 1918.

(Endorsed.)

Filed May 10th, 1918.

Verdict.

C. S. Dana, Clerk.

278 STATE OF MINNESOTA,
County of Goodhue:

In District Court, First Judicial District.

THE STATE OF MINNESOTA
against

JOSEPH GILBERT, Defendant.

Accused of the Crime of Discouraging Enlistment of Men in the
Military and Naval Forces of the United States.

At a General Term of Said Court, Begun and holden at the Court
House in the city of Red Wing in said County, on the 11th day of
March A. D. 1918, a Grand Jury was duly impaneled and sworn

according to law, which said Grand Jury, on the 14th day of March A. D. 1918, did return into open court on indictment against the said Joseph Gilbert wherein he was charged with the crime of discouraging enlistment of men in the military and naval forces of the United States, and advocating that the citizens of said State should not assist the United States in prosecuting and carrying on war with the public enemies of the United States.

Again, to wit, on the 27th day of March, 1918, the said Joseph Gilbert in open Court did plead not guilty to the charge preferred against him in the indictment.

Again, to wit, on the 8th day of May A. D. 1918, a jury of twelve men was duly tried, impaneled and sworn according to law to try the guilt or innocence of the said Joseph Gilbert and having heard the testimony, the arguments of counsel and the instructions of the Court, retired in charge of an officer of said Court, for deliberation, and on the 10th day of May, A. D. 1918, returned into open Court the following verdict in writing, to wit. We, the jury in the above entitled action find the Defendant guilty in manner and form as charged in the indictment."

JOHN E. NORSWING,

Foreman

Again, to wit, on the 10th day of May A. D. 1918 the said Defendant Joseph Gilbert was brought into open Court, and he nor anyone for him saying anything further why the sentence of the law should not be pronounced, upon the verdict aforesaid, the Court thereupon pronounced the following sentence, to-wit: "It 279 is the sentence of the law that you be punished for the commission of this crime by payment of a fine of Five Hundred Dollars and costs, and that you be confined in the county jail of this county for one year, and that you pay the costs of this prosecution to be determined by the taxation by the clerk," a stay of execution for sixty days granted by the court and bond fixed at \$2,000.

Dated at Red Wing, Minnesota, this 17th day of July, 1918.

C. S. DANA,
Clerk of District Court.

(Endorsed.)

Criminal Judgment Roll.

280 STATE OF MINNESOTA,
County of Goodhue:

District Court, First Judicial District.

STATE OF MINNESOTA, Respondent,

vs.

JOSEPH GILBERT, Appellant.

Notice of Appeal.

To Messrs. Thomas A. Mohn, County Attorney, and Clifford L. Hilton, Attorney General, Attorneys for the State:

Please take notice that the above named defendant-appellant appeals to the Supreme Court of the State of Minnesota from the judgment and the whole thereof entered in the above entitled action on the 10th day of May, 1918.

Dated July 15th, 1918.

GEORGE NORDLIN AND
THOMAS V. SULLIVAN,
Attorneys for Defendant,
St. Paul, Minnesota.

281 COUNTY OF GOODHUE:

First Judicial District.

THE STATE OF MINNESOTA

vs.

JOSEPH GILBERT.

Bond.

Know all men by these presents, That we, Joseph Gilbert, as principal and Arthur F. Johnson and Samuel Thorstenson and H. Hinrichs as sureties, of the County of Goodhue, State of Minnesota, jointly and severally acknowledge ourselves to owe and be indebted unto the State of Minnesota in the sum of Two Thousand (\$2000.) Dollars, lawful money of the United States of America, to be levied of our respective goods, chattels, land and tenements, if default shall be made in the following conditions, to-wit:

The condition of the above obligation is such, that whereas the

above bounden Joseph Gilbert has been found guilty of violating the provisions of Chap. 463 of the Laws of 1917, for the State of Minnesota, and has been duly sentenced by the District Court herein on the 10th day of May, 1918, now therefore if the said defendant Joseph Gilbert shall personally appear before the Supreme Court at the next term thereof, and to enter and prosecute his exceptions with effect, and abide the sentence thereon and in the meantime keep the peace and be of good behavior, and shall refrain from all activities in behalf of the Non-Partisan League, in the county of Goodhue, State of Minnesota, then this obligation to be void, otherwise to remain in full force and effect and with this we acknowledge ourselves content.

Witness, Our hands and seals this 10th day of May, 1918.

JOSEPH GILBERT.

ARTHUR F. JOHNSON.

SAM THORSTENSON.

Signed, sealed and delivered, in presence of

F. M. WILSON.

ARTHUR E. ARNTSON.

282 STATE OF MINNESOTA,

County of Goodhue, ss:

On this 10th day of May, 1918, before me personally appeared Joseph Gilbert, to me known to be the person who executed the foregoing bond, and acknowledged that he executed the same as his free act and deed.

GEOERGE NORDLIN,

Representative in Minnesota Legislature,

38th Legislative District.

My term expires December 31, 1918.

STATE OF MINNESOTA,

County of Goodhue, ss:

On this 11th day of May, 1918, before me personally appeared Arthur F. Johnson, Samuel Thorstenson and H. Hinrichs, to me known to be the persons who executed the foregoing bond, and acknowledged that they executed the same as their free act and deed.

[NOT'L SEAL.]

FRANK M. WILSON,

Notary Public, Goodhue Co., Minn.

My commission expires Feb. 6th, 1922.

STATE OF MINNESOTA,

County of Goodhue, ss:

Arthur F. Johnson, and Samuel Thorstenson and H. Hinrichs, being duly sworn each for himself on oath says that he is a resident

of and freeholder in the State of Minnesota, and that he is worth the sum below specified opposite his name over and above his debts and other liabilities, and exclusive of his property exempt from execution, to-wit:

Said Arthur F. Johnson the sum of \$2000 dollars.

Said Sam Thorstenson the sum of 2000 dollars.

H. Hinrichs the sum of 2000 dollars.

ARTHUR F. JOHNSON,
SAM THORSTENSON,
H. HINRICHES.

Subscribed and sworn to before me this 11th, day of May, 1918.

[NOT L. SEAL.]

FRANK M. WILSON,
Notary Public, Goodhue County, Minn.

My commission expires Feb. 6, 1922.

[Endorsed.] The State of Minnesota vs. Joseph Gilbert. Bond on Appeal. Filed May 11th, 1918. C. S. Dana, Clerk.

283 In District Court, First Judicial District.

STATE OF MINNESOTA,
County of Goodhue, ss:

THE STATE OF MINNESOTA, Plaintiff,

vs.

JOSEPH GILBERT, Defendant.

Clerk's Certificate.

I, C. S. Dana, Clerk of the above named Court, do hereby certify that I have compared the papers writing, to which this certificate is attached, with the original Indictment, Demurrer, Verdict of the Jury, Minutes of Conviction and Sentence, Notice of Appeal to Supreme Court and Bond on Appeal, as the same appears of record and on file in the said Clerk's office, at the Court House, in said County, in the above entitled cause, and that the same is a true and correct copy thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Red Wing this 17th day of July, A. D. 1918.

C. S. DANA,
Clerk.

[Endorsed.] 21089. District Court Goodhue County, State of Minnesota. Plaintiff, vs. Joseph Gilbert, Defendant. Certificate of Transcript. Filed Jul. 18, 1918. I. A. Caswell Clerk.

284 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1917.

No. 21098.

STATE OF MINNESOTA, Respondent,

vs.

JOSEPH GILBERT, Appellant.

Syllabus.

1. Intent is not an ingredient of the offense created by Chapter 463, Laws of 1917.
2. The statements which the indictment charges defendant with making, if believed, would naturally and reasonably deter enlistment and giving of aid in the war, and constitute a violation of the statute.
3. The evidence made the question as to whether defendant has committed the offense, a question for the jury and is sufficient to sustain the verdict.
4. Remarks made by members of the audience during defendant's speech, to which defendant made reply, were properly admitted in evidence in connection with such replies.
5. Leading questions, not otherwise admissible, are not made admissible by the claim that the purpose is to impeach an adverse witness to whom the same questions had been propounded, if the answer could have no tendency to prove that the adverse witness ever made any statement inconsistent with his testimony.
6. That the statute, including section three, is constitutional has been established by prior decisions.

Affirmed.

Opinion.

A public meeting, called by Louis W. Martin, an organizer for the Nonpartisan League, was held at the village of Kenyon in the county of Goodhue, on the evening of August 18th, 1917. Some two hundred people attended. Two officers of the league, N. S. Randall and the defendant, were present and made speeches. Defendant was subsequently convicted of having violated Chap. 463 of the Laws of 1917, by teaching and advocating, in the speech which he made at this meeting, that men should not enlist in the military or naval forces of the United States, and that citizens of this state should not aid the United States in prosecuting the war

against the public enemies. He appealed to this court from the judgment.

The indictment charges that on the eighteenth day of August, 1917, at the village of Kenyon in the county of Goodhue, at a public place where more than five persons were assembled, defendant did, "Unlawfully and willfully teach and advocate by word of mouth and oral speech that men should not enlist in the military and naval forces of the United States, and the citizens of the State of Minnesota should not assist the United States in prosecuting and carrying on war with the public enemies of the United States," by then and there stating to those assembled: "We are going over to Europe to make the world safe for democracy, but I tell you we had better make America safe for democracy first. You say, what is the matter with our democracy, I tell you what is the matter with it. Have you had anything to say as to who should be president? Have you had anything to say as to who should be Governor of this State? Have you had anything to say as to whether we should go into this war? You know you have not. If this is such a great democracy, for Heaven's sake why should we not vote on conscription of men. We are stampeded into this war by newspaper not to pull England's chestnuts out of the fire for her. I tell you if they conscripted wealth like they have conscripted men, this war would not last over forty-eight hours."

1. Defendant contends that this indictment is defective because it fails to allege that in speaking the words set forth therein he intended to discourage enlistment and the giving of aid.

The statute makes teaching or advocating men-enlistment or non-enlistment unlawful. It does not make the intent of the teacher or advocate an ingredient of the offence. The statute is a police regulation,

and, under it, the doing of the forbidden act is a criminal offense regardless of the intent. State v. Sharp, 121 Minn. 286, 184; State v. Lundgren, 124 Minn. 162; State v. People's Ice Co., 124 Minn. 307.

2. Defendant also contends that the statements set forth in the indictment do not constitute a violation of the statute.

The question is whether the natural and reasonable effect of the statements uttered is to deter those to whom they were made from enlisting in the military or naval forces and from aiding the United States in carrying on the war. State v. Holm, 139 Minn. 267; State v. Freerks, 140 Minn. —, 168 N. W. 23.

The declaration that the world must be made safe for democracy had been acclaimed throughout the entire country as expressive of our purpose in the war. Defendant used a reference to this sentiment as a basis for casting aspersions upon the democracy of our own country. And after declaring in effect that his hearers had had nothing to say as to whether we should go into this war, and that, if this country was a democracy, we ought to vote on the question of conscription, he asserted: "We were stampeded into this war by newspaper not to pull England's chestnuts out of the fire for her. I tell you if they conscripted wealth like they have conscripted men, this war would not last over forty-eight hours." We think that people

who heard these statements uttered, if they believe them to be true, would naturally and reasonably conclude that this country had been brought into the war needlessly, through improper excitement created by the unfounded clamor of newspapers acting in the interest of a foreign country; that the wealth of the country, if it were not unduly favored at the expense of the man-power of the country, would quickly end the war; and that the purpose of the war and the method of the government in carrying it on did not deserve their support. *State v. Freerks*, 140 Minn. —, 168 N. W. 23.

287. 3. Defendant insists that the evidence does not justify the verdict.

At the trial, he denied making the statements charged, and claimed, and produced evidence tending to show, that the statements made were to the effect that we should use all the resources of the country to bring the war to a successful and speedy end. On the other hand, several members of the audience, one of whom made some note at the time, testified positively that defendant made the statements charged and did not make the statements which he claimed to have made. Defendant argues that persons who hear statements usually remember them so imperfectly that they are unable to repeat them accurately at a subsequent time, and for that reason that the evidence for the state should not be allowed to outweigh the evidence in his favor. The weight to be given to the testimony of the several witnesses was for the jury to determine in the light of all the attending circumstances, and as they have found the testimony presented by the state to be true, there is no ground for the court to say that the verdict is not warranted by the evidence.

4. Several errors are assigned in respect to the admission and exclusion of evidence.

An attentive examination of the record shows that, throughout the trial, the court was careful to exclude all improper evidence prejudicial to defendant, and to receive all proper evidence tendered to him, and we find no errors in the rulings.

The remarks made at the meeting by members of the audience, of which testimony was admitted over objection, were not mere outside remarks made by bystanders, but were so connected with defendant's speech by the fact that he recognized them as in the nature of heckling and made answer to them, that the evidence was correctly admitted in connection with such answers.

288. The court applied the rule forbidding leading questions with some strictness, but did not infringe the rights of defendant, nor hamper him in the presentation of his defense. These rulings went only to the form of the questions, and defendant was permitted to reframe them and elicit the information sought. He insists, however, that several of the excluded questions were proper under the rule which permits leading questions when the purpose is to impeach an adverse witness. On cross-examination he had asked witnesses for the state if, in his speech, he had not made certain statements which he repeated to them, and they had testified that he had not. Without any attempt to show that they had ever made

statements inconsistent with their testimony, he claimed the right to impeach them by putting the same questions in the same form to his own witnesses. These were not impeaching questions within the meaning of the rule. The answers to them, at most, could only contradict the witnesses for the state, and could have no tendency to show that such witnesses had ever given any other or different version of the matter than they gave at the trial. While these questions were excluded, and properly so, both he and his witnesses were permitted to testify fully as to what he had said in his speech.

5. The validity of the statute, including the validity of section three as against the constitutional objections urged, has been established by prior decisions. *State v. Kaercher*, filed November 29, 1918. *State v. Townley*, 168 N. W. 561. *State v. Holm*, 139 Minn. 267.

We find nothing in the remaining assignments of error requiring special mention.

Judgment affirmed.

TAYLOR, C.

280

[Endorsed.]

No. 21080.

State of Minnesota.

Supreme Court.

State of Minnesota, Respondent,

vs.

Joseph Gilbert, Appellant.

Opinion and Syllabus.

Filed Dec. 29, 1918.

L. A. Carroll, Clerk.

Taylor, C.

280 STATE OF MINNESOTA:

Supreme Court.

STATE OF MINNESOTA, Respondent,

vs.

JOSEPH GILBERT, Appellant.

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the judgment of the

Court below, herein appealed from, to-wit, of the District Court within and for the County of Goodhue be and the same hereby is in all things affirmed.

Dated and signed December 29, A. D. 1918.

By the Court.

Attest

I. A. CASWELL,
Clerk

Statement for Judgment.

| | | |
|----------------------|------------------------|---------------------|
| Statutory Costs, \$— | Printer, \$— | Clerk, \$— |
| Return, \$— | Postage & Express, \$— | Filing Mandate, \$— |
| Appeal Bond, \$— | Acknowledgments, \$— | |
| | Transcript, \$— | |
| | Total, \$— | |

STATE OF MINNESOTA,

Supreme Court, etc.

I, I. A. Caswell, Clerk of said Supreme Court, do hereby certify that the foregoing is a full and true copy of the Entry of Judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

Witness my hand and seal of said Supreme Court at the Capind, in the City of St. Paul, Dec. 29, A. D. 1918.

[SEAL.]

I. A. CASWELL,
Clerk

[Endorsed.]

State of Minnesota.

Supreme Court.

Transcript of Judgment.

Filed Dec. 29, A. D. 1918.

L. A. Cornell, Clerk.

291 STATE OF MINNESOTA

In Supreme Court.

21089.

STATE OF MINNESOTA, Respondent.

vs.

JOSEPH GILBERT, Appellant.

Petition for Reargument and Brief Thereon.

The appellant applies for reargument herein.

The application is based upon the record, which discloses that certain questions of law involved therein have not been discussed or mentioned in the Court's opinion filed December 29, 1918, and other questions of law involved therein, we respectfully submit have not been considered from all angles.

They are matters of importance and concern not only to the defendant, but also the public.

In the interest of directness and conciseness, we present the particular questions of law in order, each being followed by a short argument with reference thereto.

1.

Intent Must Be Alleged and Proven in an Indictment Under Chapter 463.

Believing that the statement in *State v. Spatz*, to the effect "nor are there any averments of extenuating circumstances shown, that the spoken words were intended to alleviate or teach, etc.," had settled the necessity of alleging and proving intent, we did not go into this matter as fully as we would otherwise have done.

292 All authorities sustaining the rule that in prosecuting under statutes in the nature of police regulations it is unnecessary to allege or prove intent, establish these two further propositions:

(a) The act which is prohibited by a statute is one about which there can be no question as to its having been done. In other words, the question for the jury is always whether or not a certain demonstrable fact has been done, not the effect, actual or probable, of the act upon some other person or thing, but an act which, in itself, constitutes the violation of the law, and as to which no two minds could disagree as to what that act was, if done, nor as to the criminality of it.

(b) Actual intent when absent is always supplied by negligence or the failure to ascertain or to take into consideration some fact that is equally as demonstrable as the act itself.

These two propositions are indicated by the following cases, and in each of said cases there is one way in which the defendant in each, could have done the act, and there could be no question in his mind or in the mind of anyone else as to his having done the act; the effect or probable result of the act is in all of the cases absolutely immaterial.

Rex v. Ogden, 6 C. and P. 63d, 25 C. L. 570, (altering marks on merchandise).
 Rex. v. Chisholm, 14 Ont. L. Rep. 178, 9 Ont. W. Rep. 911, (selling short weight bread).
 Rex v. Yallow, 17 Ont. L. Rep. 179, 12 Ont. W. Rep. 381 (Perjury).
 U. S. v. Jackson, 25 Fed. 518, (misconduct of election officer).
 People v. O'Brien, 96 Cal. 171, 31 Pac. 45, (mutilation of records).
 Harding v. People, 10 Colo. 387, 15 Pac. 727, (practicing medicine without license).
 Patterson v. U. S., 39 App. Cas. 84, (embezzlement).
 Miles v. State, 78 Fla. 74, 51 S. 278 (sale of property subject to lien).
 Phillips v. State, 17 Ga. 461 (forgery).
 State v. Keller, 8 Idaho 699, 70 Pac. 1971 (bringing sheep from infected district).
 State v. Henzell, 17 Idaho 725, 107 Pac. 67 (wrongful sale by bailee).
 McCutcheon v. People, 69 Ill. 601 (sale of intoxicants).
 State v. Huff, 89 Me. 521, 35 Atl. 1000 (illegal fishing).
 Com. v. Connelly, 163 Mass. 539, 40 N. E. 862 (violation of election law).
 293 State v. McCollum, 44 Mo. 318, 119 Pac. 1103 (official misconduct).
 State v. Nurd, 19 Neb. 316, 27 N. W. 139 (sale of mortgaged property).
 State v. Zichfield, 23 Nev. 304, 46 Pac. 802 (bigamy).
 State v. McLean, 121 N. C. 589, 28 S. E. 140 (violation of sepulcher).

State v. Southern Ry. Co., 122 N. C. 1052, 30 S. E. 133 (discrimination by carrier).
Com. v. Weiss, 139 Pa. St. 251, 21 Atl. 10 (sale of oleomargarine).
State v. Smith, 10 R. I. 258 (adulteration).
State v. Smith, 17 R. I. 371, 22 Atl. 282 (sale of obscene literature).
State v. Foster, 22 R. I. 163, 46 Atl. 833 (peddling without license).
State v. West, 10 Tex. 555 (removing landmarks).

In all of the above cases the violator of the law knew just exactly what the law prohibited and when he did the prohibited act, he knew he had committed the crime in question; and if the commission of this one act, whether innocent or otherwise, were proved to the satisfaction of the jury, regardless of and apart from any other act or consideration whatsoever, the jury could be of only one mind as to whether or not he had committed the crime. The effect, actual or probable, of the act would have no place whatsoever in the minds of the jury.

We submit that if the exact kind of language which it was sought to prohibit were set forth in the statute, intent would not be material. Of course, a person is presumed to intend the natural consequences of his act, and intent can be proved in that way; but that does not cure an indictment faulty in that regard, nor excuse the failure of the Court to instruct the jury as to intent.

The very nature of an offence under Chapter 463 is such, that, practically the same expressions could be used with a good or on the other hand, with an evil intent. If intent is not an essential, then the use of certain expressions for the best interests in the world would be of no defense for their use, and the use of apparently harmless statements for a most vicious violation of the statute, actually accomplishing a violation thereof, could not be punished, because the language was harmless.

294 This is not true as to the various cases above cited wherein intent is non-essential as it would be impossible for any person to do the thing sought to be prevented by the particular statute and yet not be criminally liable for its violation, but with reference to the provisions of Chapter 463, let us give illustrations:

A man could quote from President Wilson's book "The New Freedom" and other author's works, and by sneering attitude and insinuating manner, absolutely teach and advocate that which is sought by the statute to be prevented, and yet could not be punished thereunder.

On the other hand, a teacher could read from an indictment to his class, and if the language were such as the Court has considered as harmful, he would be guilty, however worthy his motives.

If this line of argument is not true, then intent is an essential to the offense.

This is so, because the subject matter of the offence is words not

acts and the crime in its nature can not be dealt with as certain statutory police regulations can be.

We, with great urgency submit that the provisions of chapter 463 do not come within the rule of police regulation cases and to hold otherwise is an invasion upon the constitutional rights of the defendant.

2.

The Permitting of Statements of By-standers, etc.

This line of testimony was fully objected to when first offered (Fol. 28 to 32). The testimony given by the same witness Finstuen (Fol. 113 to 120) upon cross-examination, simply covered the ground already gone over in the examination in chief, and after defendant had unsuccessfully endeavored to keep out that kind of testimony.

295 This is also true as to testimony of Flom (Fol. 168): Wollacker's testimony (Fol. 331) was objected to although it was absolutely unnecessary to renew the objections after originally made.

We call special attention to some of this testimony which we consider highly prejudicial to the defendant's rights; (we are unable to give folio reference in our original brief because of the delay in getting the transcript and delay in getting the paper-book printed.)

"Then some one in the crowd said, Let us throw the whole outfit in the river." (Witness Finstuen, Fol. 34.)

"One fellow said, 'Let's take the whole wagon down the street. It got so noisy that finally he had to quit.'" (Witness Flom, Fols. 168-169.)

"They said load them down the river; load them down the street, somebody said and so forth——" (Witness Wollacker, Fol. 331.)

"Somebody made the remark: We ought to run him down the street. That was followed by somebody else saying that would destroy the electric light connection with Hans Brugge's restaurant." (Witness Lindholm, Fol. 163.)

The above statements can form no part of the heckling and were not recognized by the defendant as such, and were not responded to by him.

We suggest that a perusal of the testimony, particularly of Folios 28 to 34, 113 to 120, 168, 214 to 218, 249 to 250, 331 to 333, 365 to 369, 398 to 399, 463 to 464, will disclose that the defendant in no case accepted the construction placed upon his remarks by members of the crowd. An acceptance of or acquiescence therein is usually the foundation upon which such testimony is made admissible.

We respectfully submit again that the introduction of this sort of evidence, permitted collateral matters to be litigated greatly to the prejudice of the defendant, substituted the opinion and decision of other persons to be given as evidence to the jury, thus indirectly depriving the defendant of the right to a sole decision of the jury, and permitted the effects of actual preju-

dice to be given to the jury as proper subjects for their consideration.

3.

Assignment of Error No. 7.

We re-urge that the trial court erred in sustaining the objection to the interrogatory:

"Q. Was any statement similar to that made at that meeting?

A. Mr. Randall made that statement in his first speech or a statement similar to it—

Objected to.

Objection sustained." (Fol. 523-524)

By the ruling, the answer was cut short and all thereof taken from the jury. This referred to the most serious part of the language charged to the defendant, and the witness should have been permitted to show just what was said by Randall. The position of the defendant is that a remark made by Randall of a totally different meaning was distorted and erroneously attributed by the State's witnesses to the defendant.

4.

Assignments of Error Nos. 8 and 11.

We re-urge that the trial court erred in sustaining the objection of the State to the following two interrogatories:

"Q. Have you any recollection as to whether Mr. Gilbert spoke about the duty of the farmers in connection with the war?

Objected to as leading and suggestive.

Exception noted. (Fol. 530)

Q. Did he say anything about Democracy in the war?

Objected to as leading and suggestive.

Objection sustained.

Exception." (Fol. 611.)

297 This court has said that at the trial "court applied the rule forbidding leading questions with some strictness, but did not infringe the rights of defendant, nor hamper him in the presentation of his defense. These rulings went only to the form of the questions, and defendant was permitted to reframe them and elicit the information sought."

We submit that the above two interrogatories which went to the bone of this prosecution, could not be reframed, and an examination of the testimony of the defendant's witnesses clearly shows that their education, experience, was such that there was no other way in which their testimony as to these particular important matters could have been elicited. This is one of the particulars in which

defendant's trial counsel sincerely feel that defendant was deprived of the full and fair trial to which he was entitled.

5.

Constitutional Rights.

We also still maintain that the defendant, if he used the language attributed to him by the state, in doing so committed no crime, and can not be deprived of his liberty for the acts alleged or proven. Articles IV, V, IX, X and XIII of Amendments to the Constitution of United States.

We maintain that, if the defendant used that language, in doing so he acted within his rights,—rights in which he is secured by the Constitution of the United States, and of which he neither has been, nor can be deprived by any enactment of the legislature of Minnesota.

If Chapter 463, Laws 1917, be so construed that the language ascribed, to the defendant is held to be a public offense under its terms, then we maintain that the law, as so construed, is unconstitutional and void. A law of such construction and intentment the legislature has no power to enact.

298 Moreover, the defendant maintains that Chapter 463, Laws 1917, is invalid because it is a usurpation of war power vested in the federal government by the federal constitution.

In detail the position of the defendant, contending that the language ascribed to him does not constitute a public offence, but is within the rights of the defendant as defined and protected by the Constitution of the United States, may be thus stated:

1. The right of such utterance and immunity from penalty on account thereof, is a part of that liberty and justice to establish and secure which the Constitution of the United States was ordained and established by the people thereof; and which, being inherent in mankind has remained unimpaired and perfect in every citizen of the United States. Preamble to the Constitution of the United States, Article IX Amendments to the Constitution.

2. To fix a penalty upon the defendant upon the ground of the accusation stated in the indictment would deprive him of liberty and property without due process of law.—Article V and XIV, Amendments to the Constitution.

3. So to do would likewise deny to the defendant the equal protection of the law.—Article XIV, Amendments to the Constitution.

Further, the act is unconstitutional because it is an attempted exercise of powers vested exclusively in the federal government, with reference to a state of war in which the nation, not the state as such, is engaged.

299 The appellant further respectfully represents to the Court that some of the matters involved in this cause and particularly those matters immediately above stated, relate to rights

and privileges claimed by the appellant under the Constitution and laws of the United States. If, therefore, the motion for rehearing herein should be denied by this Court the cause might therefore come within the jurisdiction of the Supreme Court of the United States of America. In the event of such denial of this motion, the appellant accordingly respectfully applies to this court for a further order herein, granting a stay of execution of sentence and all proceedings herein, in this court and in the District Court of Goodhue County, for a sufficient period to enable the appellant to take such further proceedings as may be necessary to bring this matter before the Supreme Court of the United States, if he shall be so advised.

We submit the application in a sincere conviction that there has been an imperfect and incomplete determination of the issues and rights involved.

Respectfully submitted,

GEORGE NORDLIN AND
FREDERICK A. PIKE,
Attorneys for Appellant, St. Paul, Minnesota.

[Endorsed.]

21089

State of Minnesota.

In Supreme Court.

STATE OF MINNESOTA, Respondent,

vs.

JOSEPH GILBERT, Appellant.

Petition for Reargument and Brief Thereon.

Filed Jan. 4, 1919.

L. A. Caswell, Clerk.

George Nordlin and Frederick A. Pike,
Attorneys for Appellant,
St. Paul, Minnesota.

300 STATE OF MINNESOTA:

In Supreme Court.

21089.

STATE OF MINNESOTA, Respondent,

vs.

JOSEPH GILBERT, Appellant.

It is ordered that the petition for a rehearing in this case be and the same is denied.

It is further ordered that all proceedings on the judgment of conviction therein be stayed for the period of thirty days, to enable defendant to apply to the Federal Supreme Court, for a writ of error.

The bond on appeal heretofore given by defendant will stand as security for such further appearance in obedience of the judgment below as may become necessary.

Dated January 10th, 1919.

301 Supreme Court of the United States,

JOSEPH GILBERT, Plaintiff in Error,

against

STATE OF MINNESOTA, Defendant in Error.

Prayer for Reversal.

To the Honorable the Supreme Court of the United States:

Now come Joseph Gilbert, the plaintiff in error, and in connection with the writ of error issued by this Court to the Supreme Court of the State of Minnesota, prays for a reversal of the judgment of the Supreme Court of the State of Minnesota, in the action brought by the State of Minnesota, plaintiff respondent, against Joseph Gilbert, defendant-appellant, which judgment was entered in the office of the clerk of the County of Goodhue, on or about the 10th day of May, 1918; and he also prays for a reversal of the order of affirmance in said action by the Supreme Court of the State of Minnesota, entered in the office of the clerk of said Supreme Court, on or about the 20th day of December, 1918; and he also prays for a reversal of the judgment in said action of the Supreme Court of the State of Minnesota, entered in the office of the clerk of said Court on or about the 11th day of January, 1919.

FREDERIC A. PIKE,
GEORGE NORDLIN,

Attorneys for Joseph Gilbert.

(Endorsed.)

Filed Feb. 11th, 1919.

H. Mueller, Clerk,

By P. O. Scow, Deputy.

302 *For Writ of Error to the Supreme Court of the State of Minnesota.*

To the Honorable Edward D. White, Chief Justice of the United States; and to the Honorable Joseph McKenna, Associate Justice of the Supreme Court of the United States; and to the other Justices of said Honorable Court, and to the Honorable the Supreme Court of the United States:

The petition of Joseph Gilbert, a citizen of the United States who resides in the City of Saint Paul, in the State of Minnesota, respectfully shows:

1. Heretofore and on or about the 14th day of March, 1918, a criminal action was commenced in the District Court of the State of Minnesota for the County of Goodhue by the State of Minnesota, plaintiff, against Joseph Gilbert, defendant; and in said action the said defendant was your petitioner. Said action was commenced by the finding of an indictment by the Grand Jury of said Goodhue County of Minnesota, in manner and form as follows, to-wit:

"Joseph Gilbert is accused by the Grand Jury of the County of Goodhue, State of Minnesota, by this indictment of the crime of discouraging enlistment of men in military and naval forces of the United States; and advocating that the citizens of said state should not aid and assist the United States in prosecuting and carrying — war with the public enemies of the United States, committed as follows:

"The said Joseph Gilbert on the 18th day of August, A. D., 1917, at the village of Kenyon, in the County of Goodhue, State of Minn., then and there being, did, then and there, at a public place where more than five persons were then and there assembled, unlawfully and wilfully teach and advocate by word of mouth and oral speech that men should not enlist in the military and naval forces of the United States and that the citizens of the State of Minnesota should not assist the United States in prosecuting and carrying on war with the public enemies of the United States, said United States being then and there at war with the Kingdom and Imperial Government

of Germany; by then and there stating and expressing to and 303 in the presence of Joseph A. Gates, Andrew Finstuen, Gilbert

A. Flom, John A. Bradley, Thomas A. Tasa, Charles Lindholm, and Albert Hilstad, all being then and there citizens of the State of Minnesota, in substance and effect as follows, to-wit: We

are going over to Europe to make the world safe for democracy, but I tell you we had better make America safe for democracy first. You say, what is the matter with democracy. I tell you what is the matter with it. Have you had anything to say as to who should be President? Have you had anything to say as to who should be Governor of this State? Have you had anything to say as to whether we shan't go into this war? You know you have not. If this is such a great democracy, for Heaven's sake why should we not vote on conscription of men. We were stampeded into this war by newspaper not to pull England's chestnuts out of the fire for her. I tell you if they conscripted wealth — they have conscripted men, this war would not last over forty-eight hours; contrary to the form of the statute in such case made and provided against the peace and dignity of the State of Minnesota.

"Dated at Red Wing, in the County of Goodhue, in the State of Minnesota, this 14th day of March, A. D., 1918.

"H. P. HUHBAK,
Foreman of Grand Jury

2. Your petitioner, the said defendant was thereafter arrested under said indictment by the authorities of the State of Minnesota. Upon being arraigned your petitioner demurred to said indictment on the ground that the facts stated in said indictment do not constitute a public offense, for this, among other reasons, that under the constitution and the laws of the United States, your petitioner had the right to utter the things alleged by said indictment to have been said by your petitioner, but nevertheless the said District Court over-ruled your petitioner's demurser. Thereupon your petitioner entered his plea of not guilty and subsequently the issues raised by said indictment and plea came on for trial on May 8th, 1918, 301 before the said District Court of the State of Minnesota, for said County of Goodhue, at a general term thereof. Upon said trial your petitioner objected to the introduction of any evidence under the indictment on the ground that the facts stated therein do not constitute a public offense, and that there is not in the indictment alleged that the defendant had any intent of violating any provision of the laws of Minnesota upon which said prosecution was based; and further upon the ground that the statements attributed and imputed to the defendant in said indictment, were statements which under the Constitution and Laws of United States he had right to make; and said objection was over-ruled.

3. Upon the conclusion of the state's case in the progress of said trial, your petitioner moved to dismiss the action upon the ground that the state had failed to prove the offense, if any, charged in the indictment and said motion was denied.

4. At the conclusion of all the evidence presented upon said trial, the petitioner moved that the court should instruct the jury that the petitioner, therein defendant, was not guilty and said motion was denied.

5. Thereupon the court charged the jury and in said charge, errors occurred affecting the rights of your petitioner under the Constitution and Laws of the United States, to-wit:

(a) The court having been requested to charge the jury as follows, to-wit:

"I charge you that the defendant had the right to criticize the existing laws, point out their defects, injustice and unwise-dom, that he had the right to advocate their appeal."

failed and refused to charge the jury as so requested.

(b) The court having been requested to charge the jury as follows, to-wit:

"I charge you that the defendant had the right freely to discuss all public measures, to expose their defects and urge their alteration or repeal by legal methods, to criticize the constitution and the laws and advocate their amendment and to comment, however severely, if only it be fairly, upon the conduct of the officers of the government."

305 failed and refused to charge the jury as so requested.

(c) The court having been requested to charge the jury as follows, to-wit:

"Gentlemen of the jury, I charge you that if you find that the words spoken by the defendant were words criticizing existing laws, pointing out any defects therein or the justice and unwise-dom thereof, and advocating their amendment or repeal, then I charge you that the defendant is entitled to acquittal, unless said defendant at the same time and place taught or advocated resistance to any law of this state or of this land."

failed and refused to charge the jury as so requested.

6. Thereupon, the jury retired and afterwards returned into said court a verdict as follows: "We, the jury in the above entitled action, find the defendant guilty in manner and form as charged in the indictment."

7. Thereupon, your petitioner moved in arrest of the judgment of said District Court upon these grounds among others, to-wit: That the facts stated in the indictment do not constitute a public offense and that the indictment contains matter which, if true, would constitute a legal justification or excuse for the defense charged, for the reason, among others, that the utterances alleged by the indictment to have been made by the defendant were within his rights under the constitution and laws of the United States. Said motion was thereupon denied.

8. Thereafter, judgment was rendered in said court as follows: The State of Minnesota: against Joseph Gilbert: Judgment.

The above named defendant Joseph Gilbert, was indicted by the Grand Jury of said County, on the 14th day of March, 1918, for the "crime of discouraging enlistment of men in the military and naval forces of the United States, and advocating that the citizens of our State should not aid and assist the United States in the prosecuting and carrying on of war with the public enemies of the United States. And said defendant having been duly arraigned and tried by a jury duly impaneled for said trial, which said jury did on the 16th day of May, 1918, return a verdict of "guilty in manner and form as charged in the indictment" and said defendant having been duly arraigned before said Court, on the said 16th day of May,

306 1918, Judge Albert Johnson presiding, for sentence, the Court thereupon imposed the following sentence. "It is the sentence of the law, that you be punished for the commission of the crime by payment of a fine of Five hundred dollars, and that you be confined in the county jail of this county for one year, and that you pay the costs of this prosecution to be determined by the taxation of costs by the Clerk."

9. Thereafter, the defendant duly appealed to the Supreme Court of the State of Minnesota, from the judgment and the whole thereof entered in said matter, said notice of appeal being dated July 15th, 1918, and duly served on the proper officers of the State and County, and thereafter on the 25th day of November, 1918, your petitioner's appeal was argued orally and upon briefs before said Supreme Court of Minnesota. Upon said argument your petitioner urged and contended before said Supreme Court that his rights under the Constitution and laws of the United States had been invaded, that the act under which the indictment in said cause was drawn was and is for sundry reasons repugnant to the Constitution and laws of the United States; that the indictment had not stated a public offense and the evidence upon the trial had not proven a public offense, for the reason, that the alleged public offense purported to be set forth in said indictment, and claimed to have been proved by said evidence was not, and could not be under the Constitution and laws of the United States, any public offense whatever.

10. Thereafter and on the 29th of December, the said Supreme Court of the State of Minnesota nevertheless rendered its opinion and decision in said matter, affirming the action and judgment of said district court. Within 10 days thereafter, pursuant to the rule of said Supreme Court, your petitioner duly made application for re-argument therein, which was on the 11th day of January, 1919, in all things denied; and thereby, the rights and remedies of the defendant, your petitioner, were exhausted in the courts of the State of Minnesota, according to the laws thereof.

11. On said 11th day of January, 1919, at the time of rendering its final decision in said cause, the said Supreme Court of Minnesota also, however, granted a stay of proceedings in said cause, in order that the defendant, your petitioner herein, might if he should be

307 so advised, pursue his further remedies under the Constitution and Laws of the United States, by seeking a writ of error from this Honorable Court.

Wherefore, your petitioner prays that a writ of error may issue and that he may be allowed to bring up for review before the Supreme Court of the United States, the said judgment of the District Court of Minnesota and the said decision and judgment of the Supreme Court of said state, and that he may have such other and further relief in the premises as may be just; and your petitioner will ever pray, etc.

JOSEPH GILBERT.

FREDERIC A. PIKE,

GEORGE NORDLIN,

Attorneys for Petitioner.

STATE OF MINNESOTA,
County of Ramsey, etc.

Joseph Gilbert being duly sworn on his oath says, that he is the petitioner above named; that he has read the foregoing petition and that same is true.

JOSEPH GILBERT.

Subscribed and sworn to before me this 24th day of January, 1919.

FREDERIC A. PIKE,

Notary Public, Ramsey Co., Minn.

My commission expires Dec. 1, 1923.

Writ of error allowed this 30th day of January, 1919. Bond fixed at \$300.00.

LOUIS D. BRANDEIS,

Associate Justice Supreme Court U. S.

(Endorsed.)

Filed Feb. 11th, 1919.

H. Mueller, Clerk. By P. O. Snow, Deputy.

Supreme Court of the United States.

JOSEPH GILBERT, Plaintiff in Error.

against

STATE OF MINNESOTA, Defendant in Error.

Assignment of Error.

And now comes Joseph Gilbert, Plaintiff in error and makes and files this his assignment of error herein:

1. The District Court of the State of Minnesota, in and for the county of Goodhue erred in this, that it over-ruled the demur to the indictment brought against your petitioner by the Grand Jury of said county, as set forth in the petition for a writ of error herein.

2. The District Court further erred in over-ruling the objection of your petitioner to the introduction of any evidence under an indictment, upon the trial of your petitioner in the action founded upon said indictment, as set forth in the petition for writ of error herein.

3. The said District Court further erred in denying the motion of your petitioner to dismiss the action founded upon said indictment, as set forth in the petition for writ of error.

4. The said District Court further erred in denying the motion of your petitioner at the conclusion of the evidence upon his trial in said action that the court should instruct the jury that your petitioner was not guilty.

5. The said District Court further erred in said action in respect to the charge to the jury therein, (a) in that, being requested to charge the jury as follows, to-wit:

"I charge you that the defendant had the right to criticize the existing laws, point out their defects, injustice and unwisdom, that he had the right to advocate their repeal."

(b) the said court failed and refused to charge the jury as so requested; and further (c) in that the court, having been requested to charge the jury as follows, to-wit:

"I charge you that the defendant had the right freely to discuss all public measures, to expose their defects and urge their alteration or repeal by legal methods, to criticize the constitution and the laws and advocate their amendment and to comment, however severly, if only it be fairly, upon the conduct of the officers of the government."

failed and refused to charge the jury as so requested; and further (c) in that the court, having been requested to charge the jury as follows, to-wit:

"Gentlemen of the jury, I charge you that if you find that the words spoken by the defendant were words criticizing existing laws pointing out any defects therein or the justice and unwisdom thereof, and advocating their amendment or repeal, then I charge you that the defendant is entitled to acquittal, unless said defendant at the same time and place taught or advocated resistance to any law of this state or of this land."

failed and refused to charge the jury as so requested.

6. The said District Court further erred in that it denied the motion of your petitioner in arrest of judgment upon the coming in of the verdict in said action.

7. The said District Court further erred in that it denied the motion of your petitioner for a new trial in said action.

8. The Supreme Court of the State of Minnesota erred in that it affirmed the judgment of the said District Court of Minnesota in respect of the action wherein your petitioner was convicted and sentenced as set forth in his petition for writ of error herein, and erred further in denying your petitioner's application for a rehearing upon the decision of said Supreme Court in said matter.

9. The said courts of the State of Minnesota erred upon the whole record in this, that upon the whole record as made up by said courts in finality and without opportunity for further review or relief therein, your petitioner has been adjudged guilty of a crime as set forth in his petition for writ of error herein, and has been sentenced to suffer penalty for such alleged crime, notwithstanding that the acts alleged to have — done by your petitioner do not, and, under the Constitution of the laws the United States of America, cannot constitute a public offence, and that the Act under which said indictment was drawn was and is, repugnant to the Constitution of the United States.

FREDERICK A. PIKE,

GEORGE NORDLIX,

Attorneys for Plaintiff in Error.

Read on application for writ of error January 30, 1919.

LOUIS D. BRANDEIS,

*Associate Justice of the Supreme
Court of the United States.*

Endorsed.

State of Minnesota, Supreme Court.

Filed Feb. 11, 1919.

H. Mueller, Clerk.

III. Know all men by these presents, that we, Joseph Gilbert and James Mahan and J. O. Sylvester are held and firmly bound unto The State of Minnesota in the full and just sum of Three Hundred Dollars, to be paid to the said The State of Minnesota, its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this fourth day of February, in the year of our Lord one thousand nine hundred and nineteen.

Whereas, lately at a general term of the Supreme Court of the State of Minnesota in a suit depending in said Court, between The State of Minnesota, Plaintiff and the said Joseph Gilbert, defendant, a judgment was rendered against the said Joseph Gilbert and the said Joseph Gilbert having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said The State of Minnesota citing and admonishing it to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, That if the said Joseph Gilbert shall prosecute said writ of error to effect, and answer all costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

JOSEPH GILBERT. [SEAL.]
JAMES MANAHAN. [SEAL.]
J. O. SYLVESTER. [SEAL.]

Sealed and delivered in presence of

H. G. TEIGAN.
F. A. RIKE.

Approved by

LOUIS D. BRANDEIS,
Associate Justice of the Sup. Ct. of the U. S.

(Endorsed.)

Filed Feb. 11, 1919.

STATE OF MINNESOTA,
County of Ramsey, ss:

J. O. Sylvester and James Manahan being first duly sworn, doth say, each for himself, that he is the same person as the surety within named, and is a resident and freeholder of and in the County of Ramsey, State of Minnesota, and worth the sum of Six hundred Dollars above his debts and liabilities, and exclusive of his property exempt from execution.

J. O. SYLVESTER.
JAMES MANAHAN.

Subscribed and sworn to before me, on this fourth day of Feb., 1919.

H. G. TEIGAN,
Notary Public, Ramsey Co., Minn.

My Commission expires Feb. 6, 1925.

(Endorsed.)

Feb. 19, 1919.

H. Mueller, Clerk.

312 STATE OF MINNESOTA:

In Supreme Court.

STATE OF MINNESOTA, Plaintiff, Respondent,
against

JOSEPH GILBERT, Defendant, Appellant.

Affidavit.

STATE OF MINNESOTA,
County of Ramsey, etc.:

George Nordlin, being duly sworn, on his oath says that he is attorney for the defendant, appellant, Joseph Gilbert, above named; that there has been issued from the Supreme Court of the United States, upon the order and allowance of the Hon. Louis D. Brandeis, Associate Justice of said Supreme Court, a writ of error to the Honorable Supreme Court of the State of Minnesota in respect to the judgment in the above entitled cause, entered by the District Court of the State of Minnesota for the County of Goodhue and affirmed by the Supreme Court of the State of Minnesota; and that according to law and the practice of the courts, the record in the above entitled cause is about to be brought before the Supreme Court of the United States for review and for its judgment in respect thereto. Affiant further says that the stay of proceedings upon said judgment heretofore granted by the Honorable Supreme Court of the State of Minnesota has expired; and said defendant, appellant, now petitions said court for a further stay in the execution of said judgment until the ultimate determination of said writ of error, and petitions further that an order may now be made by the Supreme Court of Minnesota to that end.

GEORGE NORDLIN.

Subscribed and sworn to before me this 14th day of February, 1919.

A. J. HERTZ,
Notary Public, Ramsey Co., Minnesota.

My commission expires July 9th, 1925.

Endorsed.

Feby. 17, 1919.

H. Mueller, Clerk.

313 STATE OF MINNESOTA:

In Supreme Court.

STATE OF MINNESOTA, Plaintiff, Respondent,

against

JOSEPH GILBERT, Defendant, Appellant.

Order.

Upon the accompanying affidavit of George Nordlin, Esq., Attorney for the above named defendant, appellant, it is now,

Ordered, that the execution of the judgment in the above entitled cause heretofore entered in the District Court of Goodhue County and heretofore affirmed by this court, be and is hereby stayed until the further order of this court herein.

Dated St. Paul, February 14, 1919.

ANDREW HOLT,
Associate Justice of the Sup. Ct. of Minn.

(Endorsed.)

Affidavit & Order.

Filed Feb. 17th, 1919.

H. Mueller, Clerk.

314 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Minnesota. Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The State of Minnesota and Joseph Gilbert, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the

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315 ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of their validity; a manifest error hath happened to the great damage of the said Joseph Gilbert as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the seventh day of February, in the year of our Lord one thousand nine hundred and nineteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

Allowed by

LOUIS D. BRANDEIS,
*Associate Justice of the Supreme Court
 of the United States.*

(Endorsed.)

21089.

Supreme Court of the United States, October Term, 1918.

Joseph Gilbert, Plaintiff in Error,

vs. . . .

The State of Minnesota.

Writ of Error.

State of Minnesota Supreme Court.

Filed Feb. 11, 1919.

H. Mueller, Clerk, by P. O. Scott, Deputy.

316 To the State of Minnesota, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the

Clerk's Office of the Supreme Court of the State of Minnesota, wherein Joseph Gilbert is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Louis D. Brandeis, Associate Justice of the Supreme Court of the United States this seventh day of February, in the year of our Lord one thousand nine hundred and nineteen.

LOUIS D. BRANDEIS,

Associate Justice of the Sup. Ct. of U. S.

On this 13th day of February, in the year of our Lord one thousand nine hundred and nineteen, personally appeared George Nordlin before me, the subscriber, and makes oath that he delivered a true copy of the within citation to Clifford L. Hilton, the Attorney General of the State of Minnesota,

GEORGE NORDLIN.

Sworn to and subscribed the 15th day of February 1919,

A. J. HERTZ,

Notary Public, Ramsey County, Minnesota.

My Commission expires July 9, 1925.

(Endorsed.)

Filed Feby. 15, 1919.

H. Mueller, Clerk.

317 STATE OF MINNESOTA:

Supreme Court.

I, Herman Mueller, Clerk of the above named Court, do hereby certify, and return to the Hon. Edward D. White, Chief Justice of the United States Supreme Court, and to the other Justices of said Honorable Court, that I have compared the papers to which this certificate is attached with the original petition to the Supreme Court of Minnesota for the stay of execution of sentence and proceedings in the District Court of Goodhue County, order staying sentence and proceedings as prayed, petition for and order allowing appellant up to and including October 9th, within which time to file Record and Brief, petition for and order allowing appellant up to and including November 7th, 1918, within which time to file Record and Brief. Petition for and order directing that above entitled action be remanded to the District Court of Goodhue County for the purpose of having a motion for a new trial argued, copy of indictment, demurrer, verdict, judgment entered in District Court

of Goodhue Co. Notice and Bond on appeal to the Supreme Court of Minnesota. Clerk's certificate, Syllabus and Opinion of the Supreme Court of Minnesota, copy of judgment entered in Supreme Court of Minnesota. Petition for reargument and Brief thereon, order denying said petition, prayer for reversal, petition for writ of error to the Supreme Court of the United States, assignments of error, writ of error, Bond, Affidavit of George Nordlin, in support of and order staying judgment of the District Court of Goodhue County, until the further order of the Supreme Court of Minnesota and citation in the action therein entitled, as the same appear on file in the said Clerk's office, at the Capitol in the City of St. Paul, Ramsey County, Minnesota, and find the same to be true and correct copies thereof, and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said Supreme Court, at the City of St. Paul, in said County this 6th day of March, A. D. 1919.

[Seal of the Supreme Court, State of Minnesota.]

HERMAN MUELLER,
Clerk of the Supreme Court.

[Endorsed.]

No. —.

Supreme Court of the United States,

State of Minnesota, Respondent,

vs.

Joseph Gilbert, Appellant.

Certificate and Return of the Clerk of the Supreme Court of the State of Minnesota.

C. H. Hilton, Attorney General, St. Paul, Minn., Thomas A. Mohn, Red Wing, Minn., Attorneys for Respondent.

Thomas V. Sullivan, Geo. Nordlin, F. A. Pike, Pioneer Bldg., St. Paul, Minn., Attorneys for Appellant.

Endorsed on cover: File No. 27,017. Minnesota Supreme Court. Term No. 326. Joseph Gilbert, plaintiff in error, vs. The State of Minnesota. Filed March 24th, 1919. File No. 27,017.

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STATE OF MINNESOTA:

In Supreme Court,

No. 21089.

THE STATE OF MINNESOTA, Respondent,

v.

JOSEPH GILBERT, Appellant.

To the Honorable the Supreme Court of the United States:

In obedience to the writ of error heretofore allowed and directed to the supreme court of Minnesota, for the review of the judgment given by it in the above entitled cause, and as I am now directed by the order of this court this day filed herein, a true and correct copy of which said order is hereto attached, I, Herman Mueller, clerk of the above named court, do hereby certify that I have compared the order of this court above referred to and the attached minutes of this court, to which this certificate is attached, with the said original order so made and filed, and with the original record of the minutes of the court as the same remain in my office, and find the same to be true and correct copies thereof, and the whole thereof, all of which is so hereby attested and transmitted as additional return herein.

I further certify that the abbreviation "Rem." appearing opposite the date December 20, 1918, in the minutes of this court, means *restitutio*, which is the mandate by which this court under its rules remits the cause to the court below for its further action thereon.

[Seal of the Supreme Court, State of Minnesota.]

HERMAN MUELLER,
Clerk of the Supreme Court of Minnesota.

Dated March 10th, 1920.

STATE OF MINNESOTA:

In Supreme Court,

No. 21089.

THE STATE OF MINNESOTA, Respondent,

v.

JOSEPH GILBERT, Appellant.

A writ of error having been allowed by the supreme court of the United States for the review of the decision and judgment of this

court given in the above entitled cause, in response to which writ the clerk of this court has certified and returned copies of certain portions of the record upon which its judgment was given, now on application of the attorney general.

It is hereby ordered that the clerk of this court certify and transmit as a part of such return a complete copy of the minutes of this court as the same appear of record in his office, together with a copy of this order.

By the court:

CALVIN L. BROWN,
Chief Justice

Copy of Clerk's Register.

Date of service of notice of appeal July 15th, 1918. Appeal from [order]* judgment District Court May 10, 1918, County of Goodhue.

STATE OF MINNESOTA, Respondent,

vs.

JOSEPH GILBERT, Appellant.

C. L. Hilton, Atty Gen., St. Paul.
Thomas A. Mohn, Red Wing.

Thomas V. Sullivan, Pioneer Bldg., St. Paul.
Geo. Nordlin, " " " "
E. A. Pike, " " " "

Minutes of the Court.

| | |
|----------------|---|
| July 18, 1918. | Return filed and post card notices mailed attys. |
| " 18, " | Petition for stay of execution filed. |
| " 18, " | Order filed, execution of sentence stayed pending appeal. |
| " 18, " | Certified copy order delivered to Mr. Nordlin. |
| Sept. 9, " | Application and order filed extending App. time to Oct. 9. |
| " 9, " | Attorneys notified. |
| Oct. 7, " | Nov. 25, 1918. Argued. |
| " 14, " | Affidavit and order filed extending App. time to Nov. 7. |
| " 14, " | Affidavit and order remanding cause for purposes of motion filed. |
| " 26, " | Certified copy mailed clerk, Red Wing. |
| | Originals filed "D". |

[*Words enclosed in brackets erased in copy.]

Nov. 8, " Records filed.
 " 8, " Ap. Bls. " (with 21088).
 " 22, " Respondent's brief filed (with 21088).
 " 25, " Argued and submitted.
 Dec. 20, " Opinion and syllabus filed, affirmed, Taylor, C.
 " 20, " Attorneys notified.
 " " Order entered opinion adopted.
 " " Judgment affirmance entered 5 M2 (no costs).
 " " Judgment roll made and filed.
 " " Rem. mailed clerk, Red Wing.
 Dec. 20, 1918. Originals returned clerk, Red Wing.
 " 23, " Order entered extending time to file petition for rehearing to Jan. 4, 1919.
 " 27, " Order filed, extending stay until January 4, 1919, on condition that def't maintain in force the (above) bond, etc. See (order).
 " 27, " Original order, etc., delivered to Mr. Geo. Nordlin by order of Judge Hallam.
 " 27, " Mr. Nordlin will return order morning of Dec. 28, 1918.
 " 28, " Mr. Nordlin returned order.
 Jan. 4, 1919. Petition for reargument filed. Stay entered.
 " 4, " Attorneys notified.
 " 10, " Order denying petition for rehearing entered.
 Attorneys notified.
 Feb. 11, " Filed prayer for the reversal of the decision of the supreme court addressed to the U. S. Supreme Court, assignment of errors and petition in support of said prayer, order allowing writ of error and fixing bond of appellant in the sum of three hundred dollars, recognizance in the sum of \$300 and writ of error.
 Feb. 15, " Filed citation to show cause with proof of service on C. L. Hilton.
 " 17, " Filed petition for and order staying proceedings on behalf of the state until further ordered by the supreme court of Minn.
 Mar. 10, " Filed order of the court directing the clerk of the supreme court to transmit a certified copy of the minutes of the court to the clerk of the supreme court of the United States.

[Endorsed.]

File No. 27,017. Supreme Court U. S., October Term, 1919.
 Term No. 326. Joseph Gilbert, Plaintiff in Error, vs. The State of Minnesota. Certified copy of minutes of Supreme Court of Minnesota. Filed March 22, 1920.



Supreme Court
of the United States

Orlando, Tuesday, 1890.

No. 826

JOSEPH GILBERT, Plaintiff in Error,

vs.
THE STATE OF MINNESOTA.

MOTION TO CONTINUE.

James A. T. M.
George Morrison,
Counsel for Plaintiff in Error.

Supreme Court of the United States

OCTOBER TERM, 1919.

No. 326.

JOSEPH GILBERT, Plaintiff in Error,

vs.

THE STATE OF MINNESOTA.

MOTION TO CONTINUE.

Now comes the Plaintiff in Error and moves that the oral argument herein be continued, for the following reasons, to wit:

1. A writ of error herein to the Supreme Court of Minnesota was allowed January 30, 1919; and thereafter in due course the record herein was transmitted to this Court.

2. The brief of the Plaintiff in Error was served upon counsel for the State of Minnesota April 3, 1920. The brief on behalf of the State, Defendant in error, was filed in the Clerk's office April 23, 1920, and was delivered to Counsel for plaintiff in error April 26, 1920, in the City of Washington.

3. Upon inspection of the brief for the defendant in error, it appears that (pages 5 to 17) objection is made to

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the jurisdiction of this Court "to review the decision and judgment of the Supreme Court of Minnesota," upon this record, because the claim of the plaintiff in error was not so "presented to the State Court, if at all," as to entitle him "to challenge in this Court the validity of the statute for the violation of which he stands convicted," (Page 8). It is stated that "the defendant (plaintiff in error) on January 4, 1919, presented to the Supreme Court (of Minnesota) his petition for a re-argument in which for the first time, the contention is set up that the statute is in conflict with the constitution and laws of the United States." (Page 5).

4. The contention thus made by the defendant in error is tantamount to a motion to dismiss the writ of error on account of lack of jurisdiction in this Court,—a motion which should have been made upon notice, and which could have been made at any time since the return was filed here. The contention as presented by the defendant in error purports to be based upon the proceedings in the State Courts. The facts as to those proceedings are not accurately stated in the State's brief, because Counsel for the State have assumed that the return on file here fully and completely discloses every proceeding and contention in the State Courts. The assumption is erroneous. There is enough in the return and record now here, as we think, to sustain the jurisdiction; but upon direct attack, such as is now made, such as should have been made, as it seems to us, before argument upon the merits, it is proper, and, as we conceive necessary to the due protection of the rights of the plaintiff in error, that opportunity should be given to supplement the record now here by presentation in due form of authentic records of all pertinent proceedings in the State Courts. It is obvious that such presentation cannot be made at this time.

Respectfully submitted,

FREDERIC A. PIKE,
GEORGE NORDLIN,
Counsel for Plaintiff in Error.

Washington, D. C.
April 28, 1920.

SUBJECT INDEX.

| | Page. |
|---|-------|
| STATEMENT OF CASE..... | 1 |
| SPECIFICATIONS OF ERROR..... | 4 |
| ARGUMENT | 5 |
| RIGHTS OF CITIZENS OF THE UNITED STATES AFFECTED BY THE MINNESOTA STATUTE... | 6 |
| INTERESTS OF THE FEDERAL GOVERNMENT AF- FECTED BY THE MINNESOTA STATUTE..... | 18 |

INDEX TO CASES CITED.

| | Page. |
|--|------------|
| <i>Hall v. De Cuir</i> , 95 U. S. 485, 488..... | 19 |
| <i>Henderson v. New York</i> , 92 U. S. 271..... | 19, 20, 21 |
| <i>Houston, E. & W. R. Co. v. United States</i> , 234 U. S. 342... | 19 |
| <i>Masses Pub. Co. v. Patten</i> , 246 Fed. 27..... | 15 |
| <i>Ex Parte Milligan</i> , 4 Wallace 20..... | 9, 16 |
| <i>In re Rahner</i> , 140 U. S. 555, 559..... | 19, 20, 21 |
| <i>United States v. Cruikshank</i> , 92 U. S. 542..... | 17 |

27,017.

**IN THE
SUPREME COURT OF THE UNITED STATES**

October Term, 1919.

No. 326

JOSEPH GILBERT, Plaintiff in Error,

vs.

THE STATE OF MINNESOTA,

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

BRIEF OF PLAINTIFF IN ERROR

STATEMENT OF THE CASE.

The plaintiff in error was convicted by a jury in the District Court of the County of Goodhue, State of Minnesota, for violation of Chapter 463 of the Laws of Minnesota, 1917, because of the alleged use of the following language at a public place where more than five persons were assembled:

“We are going over to Europe to make the world safe for democracy, but I tell you we had better make America safe for democracy first. You say, what is the matter with our democracy. I tell you what is the matter with it: Have you had anything to say as to who should be president? Have you had anything to say as to who should be Governor of this State? Have you had anything to say as to whether we should go into this war? You know you have not. If this is such a great democracy, for Heaven’s sake why should we not vote on conscription of men. We were stampeded into this war by newspaper rot to pull England’s chestnuts out of the fire for her. I tell you if they conscripted wealth like they have conscripted men, this war would not have lasted forty-eight hours.”

The law in question reads as follows:

CHAPTER 463—H. F No. 1270.

“An act making it unlawful to interfere with or discourage the enlistment of men in the military or naval forces of the United States or of the state of Minnesota, and providing punishment therefor.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. *Interfering with enlistment unlawful.*—It shall be unlawful from and after the passage of this act for any person to print, publish or circulate in any manner whatsoever any book, pamphlet, or written or printed matter that advocates or attempts to advocate that men should not enlist in the military or naval forces of the United States or the state of Minnesota.

Sec. 2. *Speaking by word of mouth against enlistment unlawful.*—It shall be unlawful for any person in any public place, or at any meeting where more than five persons are assembled, to advocate or teach by word of mouth or otherwise that men should not enlist in the military or naval forces of the United States or the state of Minnesota.

Sec. 3. *Teaching or advocating by written or printed matter against enlistment unlawful.*—It shall be unlawful for any person to teach or advocate by any written or printed matter whatsoever, or by oral speech, that the citizens of this state should not aid or assist the United States in prosecuting or carrying on war with the public enemies of the United States.

Sec. 4. *‘Citizen’ defined.*—A citizen of this state for the purposes of this act is hereby defined to be any person within the confines of the state.

Sec. 5. *Violating a gross misdemeanor.*—Any person violating any provisions of this act is hereby declared to be guilty of gross misdemeanor and shall be punished therefor by a fine of not less than one hundred dollars, (\$100.00) nor more than five hundred dollars, (\$500.00), or by imprisonment in the county jail for not less than three months nor more than one year, or by both.

Sec. 6. *Officers given right to arrest.*—Any police or peace officer of this state, or any regularly commissioned officer in the army or navy of the United

States or of the national guard or organized militia of the state of Minnesota is hereby authorized to summarily arrest any person violating any provisions of this act.

Sec. 7. This act shall take effect and be in force from and after its passage.

Approved April 20, 1917."

That an appeal was taken to the Supreme Court of the State of Minnesota and the judgment of the District Court was affirmed, and thereupon a writ of error was duly issued out of this Court to the Supreme Court of Minnesota upon which the record herein is brought to this Court for review.

SPECIFICATIONS OF ERROR:**L**

The District Court of Minnesota for Goodhue County erred:

- “(a) in overruling the objection of plaintiff in error to the introduction of evidence under the indictment.
- (b) in denying the motion of the plaintiff in error for a dismissal of the action at the close of the State's case,
- (c) in denying the motion of the plaintiff in error that the Court instruct the jury that the plaintiff in error was not guilty,
- (d) in denying the motion of plaintiff in error to vacate the verdict and judgment or for a new trial.”

II.

The Supreme Court of Minnesota erred in affirming the judgment of the District Court of Minnesota for Goodhue County.

ARGUMENT:

The plaintiff in error contends that the courts below erred as set forth in our specifications of error for the reason that the indictment was brought under a statute of the State of Minnesota that is repugnant to the Federal Constitution.

The terms of the statute have been recited hereinbefore. We contend that it is repugnant to the Federal Constitution because by the terms of the latter all power of legislation regarding the subject matter contained in the statute is conferred upon congress and withheld from the states. In contravention of the provisions of the Federal Constitution in this regard the State of Minnesota has assumed to enact a statute, the result of which is obnoxious from the viewpoint of the Federal Constitution by reason of two fatal objections:

1. The statute attempts to prohibit the exercise by citizens of the United States, who may chance to be within the physical jurisdiction of the State of Minnesota, of their inherent right of free speech respecting the concerns, activities and interests of the United States of America and its Government.
2. The statute is legislation on a subject within the exclusive province of congress under the Constitution, and therefore prohibited to the State.

We proceed to consider in their order the rights of citizens of the United States and the interests of the Federal Government as affected by the statute.

RIGHTS OF CITIZENS OF THE UNITED STATES AFFECTED BY THE MINNESOTA STATUTE.

In substantiation of our contention that the State of Minnesota has by this legislation infringed upon an inherent and fundamental right of the citizens of the United States contrary to the constitutional guarantees thereof, we submit the following considerations:

We are firm in our faith in American institutions. On the foundation laid by our forefathers has been built a structure in which we believe there has come to our inhabitants a better realization of humanity's high hopes, than has been the lot of any other people; and the light of our liberties has shone abroad for the cheer and guidance of all mankind. Our faith is founded upon fact; for the secure achievements of the past have not been accidents, they have definitely rested on those conceptions of organized society, of opportunity and of liberty, which were embodied in the enterprise of government begun in the era of the American revolution, both of speech and of press.

In the discussion of these propositions the freedom of press is involved;—that practical and essential principle of right concerning which the English statesman, Fox, concisely said—

"I have never heard of any danger arising to a free state from the freedom of the press or freedom of speech; so far from it, I am perfectly clear, that a free state cannot exist without both. It is not the law that is to be found in books that constitutes—that has constituted, the true principles of freedom in any country at any time. No, it is the energy, the boldness of a man's mind that prompts him to speak, not in private, but in large and popular assemblies, that constitutes, that creates in a state the spirit of freedom, This is the principle that gives life to liberty; without it the human character is a stranger to freedom."

This principle it is that is safeguarded in the familiar language of the constitution of the several States of the Union, "the liberty of the press shall forever remain inviolate," and

that was one of those "blessing of liberty" to secure which to themselves and to us their posterity, the federal constitution was established by the people of the United States, as they themselves declared.

A NATURAL AND INHERENT RIGHT.

How shall we understand this principle? What is that liberty of the press, that freedom of speech, which is one of the blessings transmitted to us, "consecrated by the sacrifices of the revolution?"

Let us bear in mind that freedom in the utterance of thought is a natural right, not artificial—inherent in the nature of man, not created by society. Just as the English Bill of Rights, stating, in 1689 the English people's "undoubted rights and liberties,"—undoubted, though by their rulers long denied,—"introduced no new principle into the English Constitution, it was merely a declaration of the law as it stood;" so in the building of the American republic, "its constitutional provisions recognized pre-existing rights which are protected against limitation, abridgment or violation." (Cooley, *Constitutional Limitations*, page 597.)

THE RIGHT LONG VIOLATED.

Yet it is a perfectly familiar fact that the right of free expression of thought, although recognized as pre-existing when the national constitution and, as we shall hereafter remark, when the state constitutions were adopted in the revolutionary era in America,—it is, we say, nevertheless the historic fact that *this right had been persistently violated and successfully denied by the lords and oppressors of mankind.*

Less than a century had passed since, in England, the ideas of the author of the *Areopagitica* had prevailed, through the abolition of the censorship of the press, and the "attempt to fix certain opinions on the nation which were pleasing to those in power was abandoned by King and parliament alike." (Samuel Rawson Gardiner, in *Ene. Britt.*, 11th Ed. IX, 542.)

The first printing press was installed in America in 1640, but not until 1719, after vexations and illiberal censorships and penalties in all the colonies was there a beginning of a

free press on this continent, in Massachusetts. The founders of the republic well knew the evils of fettered thought.

A GOVERNMENT BY THE PEOPLE.

In the new freedom of that day "our fathers brought forth upon this continent a new nation conceived in liberty." It was to be a government by the people; and wrought into the substance of that government nay, the very character and soul of it, was liberty, freedom of speech and of the press. As Wilson, a delegate in the constitutional convention from Pennsylvania, expressed the prevailing thought, "The Magna Charta derived the liberties of the inhabitants from the grant of the King; but here *the fee simple remains in the people, and by this constitution they do not part with it.* The preamble, 'We, the people of the United States do establish,' contains the essence of all the bills of rights that have been or can be devised." Even so, other delegates thought the preamble less fully indicative of the people's control than the declaration of independence, and advocated a specific bill of rights, such as all but two states already had, as an express criterion by which it could be established "how far the government may proceed, and when it transgresses its jurisdiction." This view was aptly expressed in later years by the Supreme Court of the United States:

" 'The people of the United States'—'citizens'—these terms mean the same thing,—they both describe the political body who, according to our republican institutions, form the sovereignty and who hold the power, and conduct the government through their representatives. They are what we familiarly call 'the sovereign people' and *every citizen is one of these people, and a constituent member of this sovereignty.*'"

SOVEREIGNTY IMPLIES THE RIGHT TO HEAR AND TO DISCUSS.

Plainly, with such sovereignty come to the people, to each individual, there must abide, not only the right but more strongly the duty, that each possessor of that sovereignty should be free to learn the thought of others and free to express his own. As a high authority already quoted said of the period in English history when censorship ended—

"The nation, or at least so much of it as cared to read books or pamphlets on political subjects, was acknowledged to be the supreme judge, which must therefore be allowed to listen to what counsellors it pleased." (Gardiner.)

WITNESSES FOR FREEDOM.

A cloud of witnesses inspired the revolutionary fathers in their zeal for *freedom of speech and press*, and supported them in their judgment that such freedom is *essential to free government*. They "traced from its far off source, the progress and development of Anglo Saxon liberty, its conflicts with irrepressible power, its victories dearly bought, but always won—victories which have crowned with immortal honor the institutions of England and left their indelible impress upon the Anglo Saxon mind. These principles, our fathers brought with them to the new world and guarded with vigilance and devotion." (James A. Garfield, *arguendo*, *Ex parte Milligan*.)

"These principles were they," said Jefferson, "which the wisdom of our sages and the blood of our heroes have been devoted to obtain,"—"freedom of religion, freedom of the press, freedom of person under the protection of *habeas corpus*."

Even before the dawn of history had not Homer phrased the truth that was to wait long centuries for recognition, "to speak his words, is every man's right?" and Socrates, "the sun might as easily be spared from the universe as free speech from the liberal institutions of society."

In later years (1794) Chief Justice Eyre was to express the thought, current among the forward looking men of those times,—

"The power of communicating thoughts and opinions is the gift of God, and the freedom of it is the source of all science, the first fruits and the ultimate happiness of society, and therefore it seems to follow that human laws ought not to interpose; nay, cannot interpose to prevent the communication of sentiments and opinions in voluntary assemblies of men."

Milton, proclaiming against the censors of England,

"Truth and understanding are not such wares as to be monopolized and traded in by tickets, and statutes and standards" had cried out in the confusion of his times, "Give me liberty to know, to utter, and to argue freely according to conscience, above all liberties."

The same conception of freedom of speech and of the press had filled the thought of all of the people in the thirteen colonies. Even before the outbreak of the revolution, the Continental Congress (1774) in an address to the inhabitants of Quebec, said of freedom of the press—

"The importance of this consists besides the advancement of truth, science, morality and arts in general, in its diffusion of liberal sentiments on the administration of government, its ready communication of thoughts between subjects, and its consequential promotion of union among them, whereby oppressive officers are shamed or intimidated into more honorable and just modes of conducting affairs."

Thomas Jefferson said that: "*If given to choose only one, a free government or a free press, I would choose the latter.* Wherever there is a free press the government cannot long be unjust."

THE RIGHT ABSOLUTE UNDER EVERY FORM OF GOVERNMENT.

It must be remembered that the assertion of the inherent rights of free utterance, which as we have seen was the very breath of life in the new American Constitution, meant a denial of the right of control of speech or press not only to kings and royal governors, but just as fully a denial of such control to any who should wield official power in representative government chosen by the people themselves. In Massachusetts, Virginia and Pennsylvania and elsewhere, one or another group of colonists had in the early days attempted and enforced such repression on their fellow colonists. Such repression was to cease utterly in the full recognition by the new government of the universal inherent rights of man. The thought was afterwards expressed by John Stuart Mills,

"I deny the right of the people to exercise such coercion, either by themselves or by their government. The power itself is illegitimate. The best government

has no more title to it than the worst. *It is more noxious when exerted in accordance with public opinion, than when in opposition to it.* If all mankind minus one, were of one opinion and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person than he, if he had the power, would be justified in silencing mankind." (Essay on Liberty.)

These then, were the rights of free speech and press, regarded as among the most sacred and vital possessed by mankind, when this nation was born, when its constitution was framed and adopted. Put affirmatively, Madison said, approving the objects of union of the states, "I combine with them the necessity of providing more effectually (that is by adopting the constitution) for the security of private rights."

Put negatively, Parsons, afterwards the distinguished chief justice of his state, answering, in the Massachusetts convention that ratified the constitution in 1788, the objection that there was no bill of rights said: "No power is given the congress to infringe on any one of the natural rights of the people. Should they attempt it without constitutional authority, the act would be a nullity and could not be enforced."

In a word, it was the universal intent, the unanimous desire of the American people, that their new experiment in government, being an experiment in self-government, should be so constituted that every individual should be absolutely free, and absolutely secure in freedom, from the discarded restraints upon the right to discuss governmental affairs, and that this security in freedom should obtain alike against the one or the many, alike against individuals in office and majorities at the polls, to the end that every sovereign citizen of the republic should be freely heard to praise, to counsel or to condemn.

The defenders of the constitution when proposed maintained that its provisions were ample for the protection of fundamental liberties, including that of the press and free speech, but caution prevailed, and the first ten amendments to the constitution were adopted; giving further evidence of the determination of the people that there should be no re-

maining power anywhere in the new government, in its dual form of state and nation, for the suppression of public discussion of affairs through the medium of the press, and by speech.

In view of these developments it follows necessarily that "the English Common Law of Indictment for libel of government or court was not adopted in the several states. If we are correct in this it would not be in the power of the state legislatures to pass laws which should make mere criticism of the constitution or of the nature of government a crime, however sharp, unreasonable and intemperate it might be. The constitutional freedom of speech and of press must mean a freedom as broad as existed when the constitution which guarantees it was adopted; and it would not be in the power of the legislature to restrict it unless it might be in those cases of publication injurious to private character or public morals or safety, which come strictly within the reasons of civil or criminal liability at the common law but in which nevertheless the common law as we have adopted it fails to provide a remedy."

Cooley's Constitutional Limitations, 7th Ed., p 614.

AN UNSUCCESSFUL ATTEMPT AT REPRESSION.

In 1798 there was a departure from the principles of free speech and press. Congress passed the sedition law. Of this Cooley says:

"The Sedition Law was passed during the administration of the elder Adams; when the fabric of government was still new and untried and when many men seemed to think that the breath of heated party discussions might tumble it about their heads. Its constitutionality was always disputed by a large party and its impolicy was beyond question. It had a direct tendency to produce the very state of things it sought to repress; the prosecutions under it were instrumental among other things, in the final overthrow and destruction of the party by which it was adopted; and it is impossible to conceive at the present time of any such state of things as would be likely to bring about its re-enactment or the passage of any similar repressive statute." (*Constitutional Limitations*, p. 613.)

AMERICAN OPINION.

Up to the year 1917 Mr. Cooley's forecast of the future remained true and no such repressive statute was enacted. The spirit of America spoke in countless voices for freedom, for an unshackled press, for the right of the sovereign people to consider their affairs unafraid, to criticize and condemn their public servants, to counsel without restraint and to adjudge without hindrance.

Daniel Webster declared:

"It is the ancient and constitutional privilege of this people to canvass public measures, and the merits of public men. It is a home-bred right, a fireside privilege. Belonging to private life as a right, it belongs to public life as a duty. This high constitutional privilege I shall defend and exercise in all places in time of war, in time of peace and at all times."

James Mill, father of John Stuart Mill, in his essay on "Liberty of the Press (1821):

"So true it is, however, that the discontent of the people is the only means of removing the defects of vicious governments, that the freedom of the press, the main instrument of creating discontent is, in all civilized countries, among all but the advocates of mis-government regarded as an indispensable security, and the greatest safeguard of the interests of mankind."

William E. Channing, in the war of 1812:

"The cry has been that war is declared, and all opposition should therefore be hushed. A sentiment more unworthy of a free country could hardly be propagated. If the doctrine be admitted, rulers have only to declare war, and they are screened at once from scrutiny. In war then, as in peace, assert the freedom of speech and of press. Cling to this as the bulwark of all your rights and privileges."

The first campaign of the Republican party, in 1856, was made with the slogan, "Free soil, free men, free speech," on a platform which held this language with reference to conditions in Kansas:

"The freedom of speech and of the press has been abridged. * * * All these things have been done with the knowledge, sanction and procurement of the

present national administration. For this high crime against the constitution, we arraign the national administration, the president and his advisors."

In 1914, the United States Industrial Commission, commenting in its report, on certain phases of industrial relations, said:

"In some cases this suppression of free speech seems to have been the result of sheer brutality and wanton mischief, but in the majority of cases it undoubtedly is the result of a belief by the police, or their superiors, that they were 'supporting and defending the Government,' by such an invasion of personal rights. There could be no greater error. Such action strikes at the very foundation of Government. *It is axiomatic that a Government which can be maintained only by the suppression of criticism should not be maintained.* Furthermore, it is the lesson of history that attempts to suppress ideas, result only in their more rapid propagation.

Not only should every barrier to the freedom of speech be removed as long as it is kept within the bounds of decency and as long as the penalties for libel can be invoked, but *every reasonable opportunity should be afforded for the expression of ideas and the public criticism of social institutions.*"

The spirit of America in all these years has clung to freedom of discussion not merely as to an abstract right, nor merely as a fair sentiment that might not stand the test of a practical world; the danger to free government, to all our liberties, the possibility of the abandonment of fundamental principles, is known to be involved.

"Repression of full and free discussion is dangerous in any government resting upon the will of the people. The people cannot fail to believe that they are deprived of rights, and will be certain to become discontented, when their discussion of public measures is sought to be circumscribed by the judgment of others upon their temperance or fairness. They must be left at liberty to speak with the freedom which the magnitude of the supposed wrongs appears in their minds to demand; and if they exceed all proper bounds of moderation, the consolation must be, that the evil likely to spring

from the violent discussion will probably be less, and its correction by public sentiment more speedy, than if the terrors of the law were brought to bear to prevent the discussion." Cooley Constitutional Limitations, Feb. 27. (Cited in *Masses Pub. Co. v. Patten*, 246 Fed. 27.)

"Resign either of these (suffrage and the right of discussion) and no way of escape from oppression will be left you but civil commotion. Freedom of opinion, of speech, and of press is our most valuable privilege, the very soul of republican institutions, the safeguard of all other rights."

"If men abandon the right of free discussion, if awed by threats they suppress their convictions, if rulers succeed in silencing every voice but that which approves them; if nothing reaches the people but what would lend support to men in power, farewell to liberty. The form of a free government may remain, but the life, the soul, the substance is fled."

Wm. E. Channing, "Duties of the Citizen, in Times of Trial or Danger" (1812).

Of course the lofty soul of Wendell Phillips held on high the standard of free discussion:

"Entire unshackled freedom for every man's life, no matter what his doctrine—the safety of free discussion no matter how wide its range. *The community which dares not protect its humblest and most hated member in the free utterance of his opinions, no matter how false or hateful, is only a gang of slaves.*

"If there is anything in the universe that can't stand discussion let it crack."

And from the modern pulpit spoke Beecher:

"Free speech is to a great people what winds are to oceans and malarial regions, which waft away the elements of disease, and bring new elements of health, and where free speech is stopped miasma is bred, and death comes fast."

While the terse Lincoln summed up the discussion in a line—

"The man who will not investigate both sides of a question is dishonest."

NO SUSPENSION OF INHERENT RIGHTS.

We do not think it necessary to argue to this court that constitutional guaranties and safeguards are never suspended.

It is true that it was once contended by the law officers of the national government, in argument before the Supreme Court of the United States, concerning the fourth, fifth and sixth amendments to the constitution, that

"These are all peace provisions of the constitution and like all other constitutional and legislative laws and enactments, are silent amidst arms, and when the safety of the people becomes the supreme law." *Ex parte, Milligan*, 4 Wallace, 20.

But this shocking proposition was met by the reply of Judge Black for the petitioner.

"It is precisely in the time of war and civil commotion that we should double the guards upon the constitution. In peaceable and quiet times our legal rights are in little danger of being overborne; but when a wave of power lashes itself in violence and rage and goes surging up against the barriers which were made to confine it, then we need the whole strength of an unbroken constitution to save us from danger."

The opinion of the court in that case, by Judge Davis, should blast for all time such attacks upon the character of American government:

"THE CONSTITUTION OF THE UNITED STATES IS A LAW FOR RULERS AND PEOPLE EQUALLY IN WAR AND IN PEACE, AND COVERS WITH THE SHIELD OF ITS PROTECTION ALL CLASSES OF MEN, AT ALL TIMES AND UNDER ALL CIRCUMSTANCES. NO DOCTRINE INVOLVING MORE PERNICIOUS CONSEQUENCES WAS EVER INVENTED BY THE WIT OF MAN THAN THAT ANY OF ITS PROVISIONS CAN BE SUSPENDED DURING ANY OF THE GREAT EXIGENCIES OF GOVERNMENT. SUCH A DOCTRINE LEADS DIRECTLY TO ANARCHY OR DESPOTISM." *Ex parte Milligan*, 4 Wall 2, (1866).

The opinion charitably suggested an excuse for the proceedings in the matter before it up to that time, saying

"During the rebellion, the temper of the times did not allow that calmness in deliberation and discussion necessary to a correct conclusion of a purely judicial question."

But the fatal danger of that "temper of the times" was declared and deplored.

"BY THE PROTECTION OF THE LAW, HUMAN RIGHTS ARE SUSTAINED; WITHDRAW THAT PROTECTION AND THEY ARE AT THE MERCY OF WICKED RULERS OR THE CLAMOUR OF AN EXCITED PEOPLE."

"WHEN PEACE PREVAILS AND THE AUTHORITY OF THE GOVERNMENT IS UNDISPUTED THERE IS NO DIFFICULTY OF PRESERVING THE SAFE GUARDS OF LIBERTY—BUT IF SOCIETY IS DISTURBED BY CIVIL COMMOTION; IF PASSIONS OF MEN ARE AROUSED AND THE RESTRAINTS OF LAW WEAKEN—THESE SAFEGUARDS NEED AND SHOULD RECEIVE THE WATCHFUL CARE OF THOSE ENTRUSTED WITH THE GUARDIANSHIP OF THE CONSTITUTION AND THE LAWS. IN NO OTHER WAY CAN WE TRANSMIT TO POSTERITY UNIMPAIRED THE BLESSINGS OF LIBERTY, CONSECRATED BY THE SACRIFICES OF THE REVOLUTION."

No state has the power to deprive citizens of the United States of a fundamental inherent right.

United States vs. Cruikshank, 92 U. S. 542.

To do so would deprive such citizens as came under the operation of the state law of their equal rights as citizens of the nation and subject them to penalties imposed by the state without due process of law.

II.

INTERESTS OF THE FEDERAL GOVERNMENT AFFECTED BY THE MINNESOTA STATUTE.

THE STATUTE USURPS WAR POWER.

It is legislation on a subject within the exclusive province of congress under the constitution, and therefore forbidden to the states.

In the federal constitution are found these provisions: Section 10 of Article I. declares,

"No state shall, without the consent of Congress, lay any duty on tonnage, keep troops or ships of war in times of peace, enter into any agreement or compact with another state or with a foreign power or engage in war unless actually invaded, or in such imminent danger as will not admit of delay."

This shows, amongs other things, that the State of Minnesota is not a party to the war now being waged. And if it has not engaged in any war, and until it does so engage, legislation such as a belligerent sovereign might enact, is beyond its province.

The circumscribed reservation to the states of the "appointment of the officers and the authority of training the militia, according to the discipline prescribed by Congress," is the equivalent of an exception to the exclusiveness of congressional power and strengthens the implication of such exclusiveness.

WAR POWER CONFINED TO THE NATION.

Now we revert to the first clause of Section 8 of Article I. of the Federal Constitution, wherein Congress is empowered in broad terms to "provide for the common defense and general welfare of the United States," and to the clause delegating the full power "to declare war" etc.; to the twelfth, "to raise and support armies," etc.; and to the thirteenth, "to make rules for the government and regulation of the land and naval forces."

It will be seen that the framers of the constitution went further to safeguard the war power of the Federal Government from state interference than any other power.

In the case of interstate commerce, the inhibitions enforced by the courts are all inhibitions by implication. Hence, the power to legislate concerning the common defense and general welfare and to declare war is more clearly withdrawn from the states and vested in Congress than is the power to regulate interstate and foreign commerce. And now the principle is firmly established that there is not in matters affecting interstate commerce any zone of concurrent jurisdiction, and that when a power has been by the constitution delegated to Congress, the intention of the framers of the constitution was to delegate all the power, on the assumption that the central government was best qualified to deal with it. This doctrine is established by a long line of decisions.

See *In re Rahner*, 140 U. S. 555, 559; *Henderson v. New York*, 92 U. S. 271; *Hall v. De Cuir*, 95 U. S. 485, 488; *Houston E. & W. R. Co. v. United States*, 234 U. S. 342.

In the last cited case is stated the principle underlying the rule for which we contend here, in these words:

"The object of the commerce clause was to prevent interstate trade from being destroyed or impeded by the rivalries of local governments; and it is the essence of the complete and paramount power confided to Congress to regulate interstate commerce that wherever it exists it dominates."

It is immaterial that the statute here under consideration might be *promotive of*, rather than obstructive to, the defense and welfare of the nation. It is nevertheless a state regulation of the conduct of citizens of the United States with reference to a state of war between the United States and foreign nations.

The terms of the statute do not limit the prohibition on advocacy to eligibles who happen to be citizens of Minnesota, but it would be immaterial if it did. It relates to the duties of citizens of the United States, whether residents or non-residents of Minnesota, toward other citizens of the United

States, whether or not residents of the state. The principle would be the same if the statute purported to limit its prohibition and punishment to advocacy by citizens to other citizens of this state, because they are all citizens of the United States.

The subject matter of the statute invalidates it. The invalidity on the ground here stated would be no more apparent if the statute offered a bonus or reward to eligibles who should not enlist, or penalized those who did enlist. If vesting power over the subject in congress be not an inhibition upon state legislation in the one case, it would not be in the other. It was held that the City of New York could not be empowered by State law to appoint inspectors to assist the Federal Government in the inspection of immigrants, pertaining to the regulation of foreign commerce, that being exclusively of congressional cognizance.

Henderson v. New York, 92 U. S. 271.

So far has the doctrine gone with respect to state inference with interstate commerce, that it was held that where the Federal Government had not regulated a matter at all, its abstinen^e was equivalent to a declaration by congress that the subje^ct should remain unregulated. *In re Rakner*, 140 U. S., 555, 556, 559.

We admit of course the power of the states to enact necessary police regulations, and that these, when enacted in the exercise of that reserved power, are not invalid merely because they in slight degree and incidentally affect rights guaranteed by the Federal Constitution. Such regulations must be in fact and reality such, and must not invade the domain of power vested in the Federal Government.

THE NECESSITY OF UNIFORMITY.

The policy underlying the exclusiveness of congressional power arises from the necessity of uniformity. If the states had been left free to enact regulations of interstate commerce, there would have been endless confusion and conflict, a result clearly foreseen by the framers of the constitution. So if the entire subject of the citizens' duties and relations to the cen-

tral government in time of war had not been exclusively delegated to congress; if one state might have enacted such a statute as that now before us, a small invasion it is true, but an entering wedge for more troublesome interferences with the onerous, urgent, delicate, perilous conduct and operations of the Federal War Department, it would be difficult to place limitations on such legislation. If the legislature of Minnesota can pass and enforce this statute, it can go further. It can provide that no citizen can speak to an eligible at all without first securing its permission.

Once open the door to volunteer aid by states, and confusion, obstruction and hindrance to efficiency is sure to follow. Various state legislatures obsessed with the erroneous idea that a state sovereignty is or can become a participant in a war that the central, still another government, to which all the war power has been surrendered, has entered, might, by conflicting provisions, do vastly more harm than good.

This objection cannot be answered by saying that the statute is harmless. It is not harmless for the reason that it leads, or may lead, to malicious, groundless and vexatious prosecutions. But even if it did not, we would still insist that the whole subject matter is outside state jurisdiction.

We have reserved to the last, a reference to the fact that the entire subject matter has been fully covered by acts of congress, and the state legislature was bound to foresee that it would be and abstain. The power already resided in the hands of congress, and the state was as effectively excluded as if congress had already exercised its power. The rule declared in the *Rahner case* and in *Henderson v. New York*, is clearly applicable here, and for reasons equally strong, if not even stronger. And there is no concurrent or "twilight" zone here any more than within the power over interstate commerce.

We contend therefore, that the judgment of the District Court of Minnesota for the County of Goodhue should be reversed, and that the judgment of the Supreme Court of Minnesota affirming the judgment of the District Court of Minne-

sota should be reversed and the cause remanded for further proceedings in accordance with such reversal.

Respectfully submitted,

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Error.*

27,017

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1920

No. 79

JOSEPH GILBERT, Plaintiff in Error,

vs.

THE STATE OF MINNESOTA,

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

SUPPLEMENTAL BRIEF AND ARGUMENT
FOR
PLAINTIFF IN ERROR.

The defendant in error, in its argument, contends that the constitutional objections here offered to the legislation in question were not properly raised in the court below. Its brief, on page 5 states:

"The defendant, on January 4, 1919, presented to the Supreme Court his petition for a reargument, in which, for the first time, the contention is set up that the statute under which the defendant was indicted and convicted is unconstitutional and void because it is in conflict with the constitution and laws of the United States."

The entire first part of the State's argument (Brief, pages 8-17) rests on the basis just stated. If the basis is a *false assumption*, the argument need not be further considered.

The statement quoted is manifestly untrue. We herewith set forth excerpts from the original brief of the appellant in this cause in the Supreme Court of the State of Minnesota, (plaintiff in error here), which have, by stipulation of counsel, been made a part of the record herein:

"In view of the decisions of this court in *State vs. Townley*, and other cases arising under Chapter 463, Laws 1917, it would avail nothing to renew in this case arguments tending to support the proposition that the law is void as being repugnant to the constitution of the state and the constitution of the United States. That contention is, however, here made, although, for the reason stated, it is submitted without argument."

"We maintain that the defendant, if he used the language attributed to him by the state, in doing so committed no crime.

"We maintain that, if the defendant used that language, in doing so acted within his rights,—rights in which he is secured by the constitutions of the United States and of Minnesota, and of which he neither has been nor can be deprived by any enactment of the legislature of Minnesota.

"We maintain that the language ascribed to the defendant does not constitute a public offense under Chapter 463, Laws 1917.

"But if the law be so construed that the language ascribed to the defendant is held to be a public offense under the terms of the law for 1917, then we maintain that the law, as so construed, is unconstitutional and void. A law of such construction and intentment the legislature has no power to enact.

"Moreover, the defendant maintains that Section 3 of C. 463, Laws 1917, is invalid because its subject matter is not within the scope of the title of the act; and, further, that the entire act is invalid as a usurpation of war power vested in the federal government by the national constitution.

"In detail the position of the defendant, contending that the language ascribed to the defendant does not constitute a public offense, may be thus shown:

"1. The indictment is brought under Chapter 463, Laws 1917. Its provisions were not intended to cover,

and they do not cover, the language ascribed to the defendant; and that language does not constitute a public offense as defined by the statute.

"(a) It appears that the defendant did not advocate by any oral publication that the citizens of this state should not aid or assist the United States in prosecuting or carrying on war with the public enemies of the United States.

"(b) It appears that the language ascribed to the defendant is not within the definition of language defined by said statute as unlawful.

"2. The indictment, in sofar as it is founded on section 3 of the act, cannot be sustained, the subject thereof not being within the scope of the title of the act.

"3. The utterance of the language ascribed to the defendant is within the rights of the defendant as defined and established by the constitution of the United States and by the constitution of Minnesota.

"(a) Constitution of Minnesota, Article 1, Section 3.

"(b) Constitution of the United States.

"i. The right of such utterance and immunity from penalty on account thereof, is a part of that liberty and justice to establish and secure which the constitution of the United States was ordained and established by the people thereof; and which, being inherent in mankind, has remained unimpaired and perfect in every citizen of the United States. Preamble to the Constitution of the United States, Article IX, amendments to the constitution.

"ii. To fix a penalty upon the defendant upon the ground of the accusation stated in the indictment would deprive him of liberty and property without due process of law. Articles V and XIV, Amendments to the Constitution.

"iii. So to do would likewise deny to the defendant the equal protection of the law. Article XIV, Amendments to the Constitution.

"4. The act is unconstitutional because it is an attempted exercise of powers vested exclusively in the federal government, with reference to a state of war in which the nation, not the state as such, is engaged."

4

The Supreme Court of the State of Minnesota, in its opinion and decision of the cause, prior to the application for reargument, in disposing the constitutional contentions offered by this appellant in error, said as follows:

"The validity of the statute, including the validity of section 3 as against the constitutional objections urged has been established by prior decisions. *State vs. Kaercher*, filed Nov. 29, 1918; *State vs. Townley*, 168 N. W. 591; *State vs. Holm*, 139 Minn. 267."

The same court afterwards, in the decision of *State vs. Randall*, 143 Minn. 203, 173 N. W. 425, passing upon the same legislative act in question, said:

"Following the decisions of *State vs. Holm*, 139 Minn. 67, 166 N. W. 181, L. R. A. 1918C, 304; *State vs. Townley*, 140 Minn. 413, 168 N. W. 591; and *State vs. Kaercher*, 141 Minn. 186, 169 N. W. 699, the opinion in the Gilbert case construed the chapter in question and, as so construed, sustained it against the attack that thereby the right of free speech guaranteed by the federal constitution, was unduly curtailed."

From the foregoing it is clear beyond question that plaintiff in error fully presented all the constitutional questions here urged and that they were passed upon by the Supreme Court of Minnesota. Therefore the whole structure of the State's argument, beginning on page 8 of its Brief, falls to the ground.

Respectfully submitted,

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APR 23 1920

JAMES D. MAHER,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1919.

No. ~~226~~ 79

JOSEPH GILBERT,

Plaintiff in Error,

vs.

STATE OF MINNESOTA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF
MINNESOTA.

BRIEF AND ARGUMENT FOR DEFENDANT
IN ERROR.

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SUBJECT INDEX.

| | Page. |
|---|-------|
| Statement of the Case | 1 |
| ARGUMENT. | |
| I. | |
| Jurisdiction of this Court to Review the Judgment Complained of | 8 |
| II. | |
| Wartime Legislation, State and National— Concurrent and Reciprocal Duty of the Nation and the State | 18 |
| III. | |
| Seditious or Treasonable Utterances not Permitted Because of Constitutional Guaranty of Freedom of Speech | 25 |

INDEX TO CASES CITED.

Page.

I.

| | |
|--|-------|
| Atlantic Coast Line Ry. v. Mims, 242 U. S. | 9, 15 |
| 532 | 9, 15 |
| Bolin v. Nebraska, 176 U. S. 83, 91 | 8, 14 |
| Caldwell v. Brugerman, 8 Minn. (GIL.) 263 | 17 |
| Capital City Dairy Co. v. Ohio, 183 U. S. | |
| 238 | 11 |
| Chesapeake & Ohio Ry. Co. v. McDonald, 214 | |
| U. S. 191 | 14 |
| Chicago Life Ins. Co. v. Needles, 113 U. | |
| S. 574 | 10 |
| Chicago Railway Co. v. Chicago, 164 U. S. | |
| 454 | 9 |
| Derby v. Gallap, 5 Minn. (GIL.) 85 | 17 |
| Grannis v. Ordean, 234 U. S. 385 | 15 |
| Green Bay v. Patten, 172 U. S. 52 | 9 |
| Harding v. Illinois, 196 U. S. 78 | 14 |
| Hartford Life Ins. Co. v. Johnson, 249 U. S. | |
| 490 | 15 |
| Home for Incurables v. New York, 187 U. | |
| S. 155 | 16 |
| Hunt v. Meeker County, 130 Minn. 530 | 17 |
| Korkran Oil Co. v. Arnaudet, 199 U. S. 182 | 14 |
| Layton v. Missouri, 187 U. S. 356 | 11 |
| Loeber v. Schroeder, 149 U. S. 180 | 14 |
| Louisville & N. R. R. Co. v. Smith, 204 U. S. | |
| 551 | 15 |
| Messenger v. Mason, 10 Wall. 507 | 11 |

| | |
|--|--------|
| Missouri-Pacific Railway Co. v. Taber, 244 U. S. 201 | 9 |
| Mutual Life Ins. Co. v. McGrew, 188 U. S. 291, 292 | 9, 14 |
| Nevada Ry. v. Burres, 244 U. S. 101..... | 15 |
| Oxley Stave Co. v. Butler County, 166 U. S. 648 | 9, 14 |
| Rud v. Pope County, 66 Minn. 358..... | 17 |
| Sayward v. Denny, 158 U. S. 180..... | 14, 16 |
| Schuyler National Bank v. Bollong, 150 U. S. 85 | 11 |
| Seaboard Air Line v. Duval, 225 U. S. 477.. | 15 |
| Shull v. Raymond, 23 Minn. 66..... | 13 |
| State v. Adamson, 43 Minn. 196 | 13 |
| Waters-Pierce Oil Co. v. Texas, 212 U. S. 86. | 15 |
| Winchester v. Winchester, 121 Mass. 127... | 11 |

II.

| | |
|---|----|
| Cross v. North Carolina, 132 U. S. 131..... | 22 |
| Ex parte Siebold, 100 U. S. 371..... | 22 |
| General Statutes Minnesota 1913, §§ 2531, 2471 | 24 |
| Gustafson v. Klinow, 175 N. W. 903..... | 24 |
| Halter v. Nebraska, 205 U. S. 34..... | 21 |
| Masses Publishing Co. v. Patten, 245 Fed. 102 | 19 |
| Moore v. Illinois, 55 U. S. 20..... | 22 |
| New York v. Miln, 11 Pet. 102 | 23 |
| Presser v. Illinois, 116 U. S. 267..... | 22 |
| Sheffield v. Otis, 107 Mass. 228 | 18 |
| State v. Edwards, 94 Minn. 225 | 20 |
| State v. Frerks, 140 Minn. 349 | 20 |

| | |
|--|------------|
| State v. Heck, 23 Minn. 549 | 29 |
| State v. Holm, 139 Minn. 267, 273..... | 19, 20, 22 |
| State v. Johnson, 175 N. W. 589 | 23 |
| State v. Lundgren, 124 Minn. 162 | 29 |
| State v. Peoples Ice Co., 124 Minn. 397... | 29 |
| State v. Quackenbush, 98 Minn. 515..... | 29 |
| State v. Sharp, 121 Minn. 381..... | 29 |
| State v. Townley, 142 Minn. 326..... | 29 |
| State v. Welch, 21 Minn. 22 | 29 |
| United States v. Palan, 167 Fed. 991..... | 22 |

III.

| | |
|---|----|
| Abrams v. United States, 250 U. S. 616..... | 27 |
| Blackstone, Vol. 4, p. 151 | 26 |
| Debs v. United States, 249 U. S. 211..... | 27 |
| Prohwerk v. United States, 249 U. S. 294... | 27 |
| Rex v. St. Asaph, 3 Tr. 428 | 26 |
| Schenck v. United States, 249 U. S. 47..... | 27 |
| State v. Broms, 139 Minn. 402 | 28 |
| State v. Holm, 139 Minn. 267..... | 26 |
| State v. Kaercher, 141 Minn. 186 | 26 |
| State v. Townley, 142 Minn. 326 | 26 |
| United States v. Cruikshank, 92 U. S. 542.. | 25 |

Supreme Court of the United States.

OCTOBER TERM, 1919.

No. 328.

Joseph Gurnett,

Plaintiff in Error,

vs.

STATE OF MINNESOTA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF
MINNESOTA.

BRIEF AND ARGUMENT FOR DEFENDANT
IN ERROR.

STATEMENT OF THE CASE.

The defendant was indicted for a violation of a statute enacted by the legislature of the state of Minnesota, approved April 29, 1917, entitled:

(Numerals refer to the page of the printed record.)

"An act making it unlawful to interfere with or discourage the enlistment of men in the military or naval forces of the United States or the state of Minnesota, and providing punishment therefor."

The act is set out at length in the brief of counsel for the plaintiff in error and its reproduction here is unnecessary.

The defendant, upon his arraignment, interposed a demurrer to the indictment upon the grounds that more than one offense is charged therein, and that the facts stated do not constitute a public offense. The demurrer having been overruled and the defendant having pleaded not guilty to the charge, and the cause having proceeded to trial, the defendant objected to the introduction of any evidence in support of the indictment upon various grounds stated in his motion (1) that the facts stated therein do not constitute a public offense; (2) that the statute under which the indictment is found is unconstitutional; (3) that two separate and distinct causes of action or public offenses are stated therein and the same is duplication; (4) that it is not charged in the indictment that the defendant had any intent to violate the statute or cause any of the results intended to be prevented by the act, and (5) "upon the further ground that the statements attributed and imputed to said defendant in said indictment were statements of opinions which, under the laws of this state and the constitution of this state and the laws and constitution of the United States, he had a

right to make, without, at the same time, the same becoming a violation of any law of the state or the United States." (3)

The state introduced evidence substantiating the charge made in the indictment. At the close of the evidence the defendant asked that the jury be instructed to find a verdict of not guilty upon the grounds that the evidence presented by the state is insufficient to establish the commission of the offense charged, and that the evidence presented by the defendant established his innocence. This motion was denied. (120.) The defendant submitted to the trial court thirty-five requests for instructions. (126-33.) Some of these requests, notably numbers two, ten, twelve, eighteen, nineteen, twenty-four and thirty-two were presented to the jury substantially as requested. Others were given in a general charge stating the rules by which the jury were to be guided in arriving at a verdict. The charge of the court is given at length at page 125 of the printed record. There was a verdict of guilty, and the state having moved for sentence thereon the defendant interposed a motion in arrest of judgment upon these grounds:

- (1) That more than one offense is charged in the indictment;
- (2) The facts stated in the indictment do not constitute a public offense;
- (3) The indictment contains matter which, if true, would constitute a legal justification or excuse for the offense as charged. (125.)

The motion in arrest of judgment having been overruled, judgment was entered finding the defendant guilty of the offense charged in the indictment and imposing the sentence of the court that he pay a fine of \$500 and costs and be imprisoned in the county jail for the period of one year.

(150) From the judgment of conviction, the defendant appealed to the supreme court of the state.

(151) Recognizing later that in the absence of a settled case, a bill of exceptions, or a motion for a new trial the appeal from the judgment did not bring up for review the regularity of the proceeding had in the trial court, the defendant obtained from the supreme court an order remanding the case for the purposes of a motion for a new trial.

(147) Thereupon the defendant filed in the trial court a formal motion for a new trial assigning as error certain rulings of the court as to the admissibility of certain specified evidence received or offered at the trial, and upon the further grounds therein assigned:

- (1) That the court erred in overruling defendant's motion for dismissal at the close of the state's case, and
- (2) That the court erred in denying the defendant's motion in arrest of judgment.

This motion is set out in the record at page 133, and the order denying the motion appears at page 135.

The supreme court of Minnesota on December 20, 1918, rendered its decision affirming the judgment appealed from, and thereupon and on that date

judgment was entered accordingly and the proceedings were remanded to the court below with instructions to carry the sentence into effect. The opinion of the court and the judgment given thereon is set out at pages 154 to 158, inclusive, of the record.

The defendant, on January 4, 1919, presented to the supreme court his petition for a reargument in which, for the first time, the contention is set up that the statute under which the defendant was indicted and convicted is unconstitutional and void because it is in conflict with the constitution and laws of the United States. Certain specific provisions of the federal constitution are therein called to the attention of the court and immunity from prosecution for the utterances complained of is there asserted. This petition and the order of the court denying it will be found in the printed record at pages 159 to 166, inclusive.

In his petition for a reargument the appellant asserts:

"If therefore the motion for rehearing herein should be denied by this court, the cause might therefore come within the jurisdiction of the supreme court of the United States of America. In the event of such denial of this motion, the appellant accordingly respectfully applies to this court for a further order herein granting a stay of execution of sentence and of all proceedings herein in this court and in the district court of Goodhue county for a sufficient period to enable the appellant to take such further proceedings as may be necessary to bring this matter before the supreme court

of the United States, if he shall be so advised." (165)

The defendant, in his petition for a writ of error, recites the order of the trial court overruling his demurrer to the indictment, his plea of not guilty, his objection to the introduction of any evidence under the indictment on the grounds stated, his motion for dismissal made at the conclusion of the state's case, his request that the jury be instructed to return a verdict of not guilty, the failure of the trial court to give the jury certain requested instructions, the denial of his motion in arrest of judgment made at the time the jury returned its verdict of guilty, the judgment of the supreme court of the state affirming the judgment of conviction notwithstanding the error complained of, his subsequent application to that court for a reargument and for a reversal of the conclusions reached, and the denial of this application.

The record of the proceedings had in the state court is returned here pursuant to the direction contained in a writ of error allowed by a justice of this court on January 30, '919. (171)

There are nine assignments of error, the first seven of which relate to proceedings in the trial court, but by assignment eight it is urged that,

"The supreme court of the state of Minnesota erred in that it affirmed the judgment of the said district court of Minnesota in respect of the action wherein your petitioner was convicted and sentenced, as set forth in his petition for writ of error herein, and erred further in denying your petitioner's application

for a rehearing upon the decision of said supreme court in said matter."

By assignment nine it is urged that,

"The said courts of the state of Minnesota erred upon the whole record in this, that upon the whole record as made up by said courts in finality and without opportunity for further review or relief therein, your petitioner has been adjudged guilty of a crime as set forth in his petition for writ of error herein, and has been sentenced to suffer penalty for such alleged crime, notwithstanding that the acts alleged to have—done by your petitioner do not, and, under the constitution of the laws of the United States of America, cannot constitute a public offense, and that the act under which said indictment was drawn was and is repugnant to the constitution of the United States."

ARGUMENT.

I.

We respectfully submit that upon the record here presented this court is without jurisdiction to review the decision and judgment of the supreme court of Minnesota, for the reason that the claim of privilege or immunity now claimed by the defendant under the constitution of the United States was not presented to the state court, if at all, in the manner required to entitle the defendant to challenge in this court the validity of the statute for the violation of which he stands convicted.

An appeal to the jurisdiction of this court must not be a mere afterthought, and if any right, privilege or immunity is asserted under the constitution or laws of the United States, it must be specially set up and claimed before the final adjudication of the case from which the appeal is sought to be maintained.

Bolin v. Nebraska, 176 U. S. 83.

This court will not review the final judgment of the highest court of the state even if it denied some title, right, privilege or immunity of the unsuccessful party, unless it appear from the record that such title, right, privilege or immunity was specially set up or claimed in the state court as belonging to such party under the constitution or some treaty, statute, commission or authority of the United States.

The words "specially set up or claimed" imply that if a party intends to invoke, for the protection of his rights, the constitution of the United States or some treaty, statute, commission or authority of the United States, he must so declare; and unless he does so declare "specially," that is, unmistakably, this court is without authority to re-examine the final judgment of the state court. The jurisdiction of this court to re-examine the final judgment of a state court cannot arise from mere inference, but only from averments so distinct and positive as to place it beyond question that the party bringing a case here from such court intended to assert a federal right.

Oxley Stave Co. v. Butler County, 166 U. S. 648.

Chicago Railway Co. v. Chicago, 164 U. S. 454.

Green Bay v. Patten, 172 U. S. 52.

To become the basis of a proceeding in error from this court to the highest court of the state "the right, privilege or immunity" claimed must be "especially set up or claimed" and must be denied by the state court. This means that the claim must be asserted at the proper time and in the proper manner by pleading, motion or other appropriate action under the state system of pleading and practice.

Mutual Life Insurance v. McGrew, 188 U. S. 291.

Atlantic Coast Line v. Mims, 242 U. S. 532.

Missouri-Pacific Railway Co. v. Taber, 244 U. S. 201.

No such claim of right, privilege or immunity was set up or claimed before the supreme court of Minnesota, except by way of an application for a reargument after decision, judgment and remand; and as we shall urge, that was not "at the proper time and in the proper manner" in which to set up and claim such privilege or immunity.

It does not appear that any such right, privilege or immunity was specially set up or claimed in the trial court, from which it would follow that an affirmation of the judgment of conviction by the highest court of the state necessarily denied the claim of immunity thus specially set up at the trial, and that therefore this court has jurisdiction to review the question thus determined against the accused.

Chicago Life Insurance Co. v. Needles, 113 U. S. 574.

Before proceeding to trial the defendant interposed a demurrer to the indictment, (2) but no suggestion is made therein that the statute upon which it is based violates any constitutional provision. At the opening of the trial there was a motion (3) to exclude evidence upon the ground then for the first time stated "that section 3, chapter 463 of the Laws of Minnesota 1917, under which this indictment is brought, is unconstitutional." Such an objection, including no specification as to the particular clause of the constitution relied upon, was wholly insufficient to raise any federal question.

Capital City Dairy Co. v. Ohio, 183 U. S. 238.
Messenger v. Mason, 10 Wall. 507.

The exception to the action of the state court, in overruling the objection to the introduction of any evidence on the ground that the indictment is insufficient, does not indicate that the attention of the state court was directed to the proposition that by its decision it might deny some title, right, privilege or immunity arising under the constitution of the United States.

Schuylerville National Bank v. Bollong, 150 U. S. 85.

An objection raised in the state court, that a state statute is unconstitutional and void, relates only to the power of the state legislature under the state constitution and raises no federal question which will give this court jurisdiction to review the judgment of the highest court of the state sustaining the validity of the statute.

Layton v. Missouri, 187 U. S. 356.

There was a motion to dismiss the prosecution, submitted at the close of the state's case, (90) but this motion was based solely on the ground of the insufficiency of the evidence to establish the commission of the offense charged. Again, at the close of the evidence, the defendant asked the court to instruct the jury to return a verdict of acquittal. (120) This motion was based on the sole ground that the evidence establishes beyond reasonable

doubt that the defendant is not guilty of the offense charged against him. After the jury had returned its verdict finding the defendant guilty, the defendant moved in arrest of judgment, (125) on the ground that more than one offense is charged in the indictment, that the facts stated therein do not constitute a public offense and that the indictment contains matter, which if true, constitutes a justification or excuse for the offense so charged. In none of these motions was there any claim of right, privilege or immunity under any provision of the constitution of the United States, nor was there any suggestion of the invalidity of the statute upon which the prosecution was based, because in conflict therewith.

It appears, inferentially at least, that the defendant submitted certain requests for instructions to the jury, (126) thirty-five in number, some of which were given as requested, some of which were substantially given in the general charge of the court and some of which were not given. There was not embraced in these requests for instructions any challenge of the validity of the statute upon which the prosecution was based, nor was the court requested to instruct the jury that under any provision of the constitution of the United States the defendant had the right to utter the words charged to have been spoken by him to his audience. The most that can be said is that the court was asked to instruct the jury that the defendant had the right freely to discuss existing laws, point out their defects, injustice and unwisdom, and advocate their

repeal or amendment. We submit that this falls far short of a claim of right, privilege or immunity under any specific provision of the constitution of the United States, and furthermore, certain of these requests, notably number thirteen, by which the court in effect was requested to instruct the jury, that unless the words spoken by the defendant had the actual effect of discouraging enlistments of men in the military and naval forces of the country there must be a verdict of acquittal, were manifestly incorrect. The rule universally recognized is that if the language employed, irrespective of its effect upon those who heard it, may reasonably have the effect of discouraging enlistments, the offense is established without proof that such in fact was the effect.

We call attention to the rule of practice obtaining in the state court that, where distinct requests for instructions to the jury are presented to the court, some of which are in substance embodied in the general charge and some of which are erroneous, a general exception to the refusal of the court to charge the jury as requested is not sufficient to entitle the party to a review as to the refusal of any of the specific requests.

Shull v. Raymond, 23 Minn. 66.

State v. Adamson, 43 Minn. 196.

The right of this court to review a judgment of a state court by writ of error is regulated by section 709, Revised Statutes United States. To lay the foundation for such right of review it is neces-

sey to bring the federal question in some proper manner to the consideration of the state court, whose judgment it is sought to review; if this is not done, the federal question cannot be originated by assignments of error in this court.

Chesapeake & Ohio Ry. Co. v. McDonald, 214 U. S. 191.

If it is urged, as we assume it will be, that the claim of immunity from prosecution, because of the alleged invalidity of the state statute on the ground now asserted that it is in conflict with the provisions of the constitution of the United States guaranteeing to the citizen the freedom of speech, was presented in the petition addressed to the court below, then we answer that under the decisions of this court such claim of immunity cannot be recognised as properly made in the state court when set up for the first time in a petition for rehearing after judgment affirming the conviction of the accused and remand of the cause to the trial court for further proceedings thereon.

Loeb v. Schroeder, 149 U. S. 180.

Hayward v. Denny, 158 U. S. 180.

Oxley Stave Co. v. Butler County, 166 U. S. 648.

Bolin v. Nebraska, 176 U. S. 91.

Mutual Life Ins. Co. v. McGrew, 188 U. S. 292.

Harding v. Illinois, 196 U. S. 78.

Kokran Oil Co. v. Armandet, 199 U. S. 182.

Louisville & N. R. R. Co. v. Smith, 294 U. S. 551.

Waters-Pierce Oil Co. v. Texas, 212 U. S. 86.

Seaboard Air Line v. Duval, 225 U. S. 477.

Atlantic Coast Line Ry. v. Miss., 242 U. S. 522.

Nevada Ry. v. Borrus, 244 U. S. 191.

Hartford Life Ins. Co. v. Johnson, 249 U. S. 490.

It cannot be said upon the record here presented that the state court considered and overruled the conviction set up by the defendant for the first time in his petition for a reargument, and that the jurisdiction of this court is properly invoked because the case is within the exception to the general rule declared in the decisions above referred to.

Grannis v. Orleans, 234 U. S. 385.

The record does not show that the state court entertained the application for reargument and understandingly passed upon the merits of the constitutional question therein for the first time presented. The order of the court amounts to no more than a denial of the application.

The state court, instead of allowing a writ of error for the review of its decision, as it might have done, and thereto certified that the defendant in the proceedings had in the state court set up and claimed a right, privilege and immunity under the

constitution of the United States, and that such contention had been denied, which allowance might tend to show the understanding of the court that such immunity had been claimed and denied, allowed a stay of proceedings to enable the defendant to make such application to this court, if so advised. The stay of proceedings was granted, apparently in response to the request contained in the defendant's application for a rehearing, which we have quoted above.

Had the state court indicated its willingness to allow a writ of error instead of sending the defendant to this court with his application therefor, which allowance might be considered as impliedly recognizing that its judgment was subject to review in this court, yet its certificate as to the existence of grounds upon which the interposition of this court might be successfully invoked, of itself, would not be sufficient to confer jurisdiction upon this court to re-examine its judgment.

Home for Incurables v. New York, 187 U. S.

155.

Sayward v. Denny, 158 U. S. 180.

It is not within the proper purpose of an application for reargument to raise up new contentions or to interject into the record questions not presented or passed upon before decision. Orderly rules of practice require that the contention of the parties be presented to the court before judgment is given thereon, and an application for reargument is entertained only upon a showing that the

court through its own inadvertence or that of counsel has fallen into some misunderstanding or mis-statement of fact, which has lead the court to an erroneous conclusion.

Derby v. Gallap, 5 Minn. (Gil.) 85.

The judgments of a court of final appeal have the strongest presumption in their favor and cannot be freely reconsidered without unreasonably protracting litigation, disregarding the claims of other litigants to the attention of the court, and impairing popular confidence and respect.

Winchester v. Winchester, 121 Mass. 127.

The application for a reargument of a cause once passed upon and decided in the appellate tribunal is required to be presented before the court has rendered its final judgment thereon, and such application is never entertained after remand to the trial court for further proceedings, in accordance with the judgment of the appellate court.

Caldwell v. Bruggerman, 8 Minn. (Gil.) 263.

Rud v. Pope County, 66 Minn. 358.

Hunt v. Meeker County, 130 Minn. 530.

We respectfully submit that for the reasons indicated the writ of error allowed herein should be dismissed.

II.

The state statute, for a violation of which the plaintiff in error was convicted, makes it an offense punishable by fine or imprisonment or both to teach or advocate that the citizens of the state of Minnesota should not enlist in the military or naval forces of the United States, or of the state of Minnesota. It antedates in its enactment the selective service act of May 18, 1917, under which the American army was mobilized. That act provides in its first section for raising a force of 500,000 enlisted men. Thereafter in the act the members of the force thus raised are in every connection referred to and characterized as enlisted men and their status is distinguished from that of volunteers by referring to the latter as joining the army through volunteer enlistment. The men inducted into service under its provisions, and those entering the service otherwise, are all recognized as having enlisted as soon as they took the required oath.

In the primary meaning of the word, a person is enlisted whose name is duly entered upon the military rolls, and it applies to those who are drafted as well as to those who volunteer.

Sheffield v. Otis, 107 Mass. 228.

It cannot be doubted that utterances which interfere with or discourage compliance with the provisions of the selective service act interfere with and discourage enlistment, although not addressed

to the subject of voluntary enlistment. As used in the selective service act enlistment means joining the army under any of the methods provided for the purpose, whether through the procedure provided for compulsory draft or by voluntary act.

We think it too plain to require extended argument that if the reasonable effect of the utterances of the accused, which manifestly were put forth by way of advocacy of his contention, that the selective service act was discriminatory and wrongful and an invasion of personal rights, the state law was violated, and assuming the validity of the legislation, he was rightfully convicted.

If the natural and reasonable effect of his utterances be to encourage resistance to the law requiring military service of all citizens within the specified classification, and the words are used in an endeavor to persuade resistance to such requirement, it is immaterial that the duty to resist is not mentioned or the interest of the persons addressed in resistance is not suggested. That one may wilfully obstruct enlistment without advising in direct language against such enlistment and without stating that to refrain from enlistment is a duty or in one's interest, seems to us too plain for controversy.

Masses Publishing Co. v. Patten, 245 Fed. 102.

United States v. Pierce, 245 Fed. 878.

State v. Holm, 139 Minn. 267.

We direct attention to the rule of construction declared by the state court in an early case and adhered to in numerous subsequent decisions.

"When without reference to the intent the statute forbids the doing of an act in certain circumstances and a party is under no obligation to do it, unless he knows it to be lawful, if he does the forbidden act he violates the law"

State v. Heck, 23 Minn. 549.

State v. Welch, 21 Minn. 22.

State v. Edwards, 94 Minn. 225.

State v. Quackenbush, 98 Minn. 515.

As said in the opinion of the court in the case at bar: The statute is a police regulation and under it the doing of the forbidden act is a criminal offense regardless of the intent.

State v. Sharp, 121 Minn. 381.

State v. Lundgren, 124 Minn. 162.

State v. Peoples Ice Co., 124 Minn. 307.

To violate the statute it is not necessary that the language employed by the accused should directly and expressly urge men to refrain from enlisting, but the statute is violated, if the natural and reasonable effect of the utterances complained of is to deter men from doing so.

State v. Holm, 139 Minn. 267.

State v. Freerks, 140 Minn. 349.

State v. Townley, 142 Minn. 326.

The act under consideration does not relate to the raising of armies for the national defense, nor to rules and regulations for the government of those under arms. It is simply a local police measure, aimed to suppress a species of seditious speech

which the legislature of the state has found objectionable. If the legislature has otherwise power to prohibit utterances of the character of those here complained of, the fact that such suppression has some contributory effect on the federal function of raising armies is quite beside the question. We need only direct the attention of this court to its decision sustaining legislation of this character.

"Except as restrained by its own fundamental law or by the supreme law of the land, a state possesses all legislative power consistent with a republican form of government; and it may by legislation provide not only for the health, morals and safety of its people, but for the common good as involved in their well being, peace, happiness and prosperity."

Halter v. Nebraska, 205 U. S. 34.

The court below so well states its understanding of the doctrine announced by this court in the decision cited that we venture to quote from its opinion:

"The citizens of the state are also citizens of the United States and owe a duty both to the state and to the United States. The state is a part of the nation and owes a duty to the nation to support, in full measure, the efforts of the national government to secure the safety and protect the rights of its citizens and to preserve, maintain and enforce the sovereign rights of the nation against the public enemies, and to that end the state may require its citizens to refrain from any act which will interfere with or impede the national government in effectively prosecuting the war against such public enemies. It is the duty of all citizens of the state to aid the state in performing its duties as a part of the nation, and the fact that

such citizens are also citizens of the United States and owe a direct duty to the nation does not absolve them from their duty to the state, nor preclude the state from enforcing such duty. True, the state cannot make or enforce requirements which are inconsistent with those of the national government, for those of the national government are paramount in case of conflict. But here there is no conflict between the state statute and the federal law and both may subsist and be given effect."

State v. Holm, 139 Minn. 273.

"It cannot be successfully questioned that the state governments, unless restrained by their own constitutions, have the power to regulate or prohibit associations and meetings of the people, except in the case of peaceable assemblies to perform duties or exercise the privileges of citizens of the United States. * * * The exercise of this power by the states is necessary to the public peace, safety and good order. To deny the power would be to deny the right of the state to disperse assemblies organized for sedition and treason."

Presser v. Illinois, 116 U. S. 267.

"Every citizen of the United States is also a citizen of a state or territory. He may be said to owe allegiance to two sovereigns and may be liable to punishment for an infraction of the laws of either. The same act may be an offense or transgression of the laws of both."

Moore v. Illinois, 55 U. S. 20.

Ex parte Siebold, 100 U. S. 371.

Cross v. North Carolina, 132 U. S. 131.

United States v. Palan, 167 Fed. 991.

"A state has the same undenialable and unlimited jurisdiction over all persons and things

within its territorial limits as any foreign nation; where that jurisdiction is not surrendered or restrained by the constitution of the United States. That, by virtue of this, it is not only the right, but the bounden and solemn duty of a state, to advance the safety, happiness and prosperity of its people, and to provide for its general welfare by any and every act of legislation, which it may deem to be conducive to these ends, where the power over the particular subject, or the manner of its exercise is not surrendered or restrained."

New York v. Miln, 11 Pet. 102.

We respectfully direct the attention of the court to a recent decision of the supreme court of Wisconsin, in which the concurrent and reciprocal duty of the nation and the state, in respect of wartime legislation, is ably discussed and presented. In that case the court said:

"It is insisted that the services performed were performed for the United States, not for the state of Wisconsin; that the beneficiaries did not enter nor remain in the service at the instance of the state, but of the United States and that there is no reciprocal benefit such as lies at the foundation of constitutional taxation. However, the benefit which flows to the United States from the services performed is also a benefit to the state. The United States is composed of the family of states which in the aggregate constitute the United States. The common defense by the nation can only be successfully maintained by co-operation of the states and hence when a war is waged by the nation, those supporting it are performing service as well for their respective states as for the nation."

State v. Johnson, 175 N. W. 589.

In passing upon an act of the legislature of the state of Minnesota granting additional compensation by way of bonus to those of its citizens engaged in the military and naval service of the government during the war, the supreme court of that state said :

"The appellant urges that the legislation in question is not within the powers granted by the constitution, because the beneficiaries, or a large proportion of them, were soldiers of the United States; that even the national guard units finally became federalized and lost their identity as state troops; that under such circumstances the state of Minnesota is under no legal or moral obligation to them such as will support the taxation provided for in this act. With this construction we do not agree. It is true that the federal government alone has power to declare war, but, having done so, the government and people of Minnesota become bound to defend and support the national government. While the states of the nation are sovereign in a certain field, they are also members of the family of states constituting the national organization."

Gustafson v. Rhinow, 175 N. W. 903.

The state of Minnesota, in conformity with its laws, maintains an army and navy.

General Statutes Minnesota 1913, §§ 2351, 2471. The able-bodied male residents of the state between the ages of 18 and 45 years are required in time of war to render military or naval service. The state law, the validity of which is here challenged, makes it unlawful for any person in any public place at any meeting where more than five

persons are assembled to advocate or teach by word of mouth, or otherwise, that men should not enlist in the military or naval forces of the United States, or the state of Minnesota.

The selective service act of May 18, 1917, provides for the drafting into the military service of the United States the national guard of the several states, and that act as amended imposes upon each state and territory and the District of Columbia the obligation to supply its quota of troops for the regular army in the proportion that its population bears to the total population of the United States. This legislation accords with the general understanding of the duty of the states to actively assist in the common cause.

We submit that the legislation is within the proper and legitimate exercise of the police power of the state and should be sustained.

III.

The provision of the federal constitution respecting laws abridging freedom of speech or the right of the people peaceably to assemble and petition the government for redress of grievances was not intended to limit the action of the state government in respect to their own citizens, but to operate upon the national government alone.

United States v. Cruikshank, 92 U. S. 542.

The constitution of the state of Minnesota contains a guaranty that,

"The liberty of the press shall forever remain inviolate, and all persons may freely speak, write and publish their sentiments on all subjects, being responsible for the abuse of such right."

The validity of the statute here under consideration, as against the objection that it is violative of this provision of the state constitution, is sustained by the decisions of the supreme court of the state cited in the opinion in the case at bar.

State v. Holm, 139 Minn. 267.

State v. Kaercher, 141 Minn. 186.

State v. Townley, 142 Minn. 326.

These constitutional provisions declare in statutory form what Lord Mansfield is said to have held in

Rex v. St. Asaph, 3 Tr. 428,

that:

"The liberty of the press consists in printing without any previous license subject to the consequences of law,"

and what Lord Blackstone (Vol. 4, p. 151) said in this language:

"Liberty of the press consists in laying no previous restraint upon publications and not in freedom from answers for criminal matter when published. Every free man has an undoubted right to lay what sentiments he pleases before the public, but if he publishes what is improper, mischievous or illegal, he must take the consequence of his own temerity."

There is no constitutional right and no natural right involved in any guaranty of the freedom of

speech, which permits seditious or treasonable utterances at any time or in any place.

In refutation of the assertion of the right of plaintiff in error to give utterance to the language quoted in the indictment, notwithstanding that such utterances are forbidden by the laws of the state, we need only refer to the very recent decisions of this court passing upon similar conditions arising under the federal espionage act.

Schenck v. United States, 249 U. S. 47.

Frohwerk v. United States, 249 U. S. 284.

Debs v. United States, 249 U. S. 211.

Abrams v. United States, 250 U. S. 616.

In these decisions the court declares that the character of every act depends upon the circumstances in which it is done and that the question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the evils which the legislation has sought to prevent, and when a nation is at war many things that might be said in times of peace are such a hindrance to its efforts that their utterance will not be endured so long as men fight, and that no court could regard them as protected by any constitutional right.

The conclusions expressed in these decisions confirm and sustain the declarations of the supreme court of Minnesota.

"Defendant asserts his constitutional right of freedom of speech. We do not think the

question is involved. He has no constitutional right by means of the privilege of freedom of speech to force his thoughts upon the attention of the public in public places in such manner that riot and disorder will inevitably result."

State v. Brooks, 139 Minn. 492.

The proper construction of the state statute, as well as the question of the sufficiency of the evidence to sustain the conviction of the plaintiff in error thereunder, are conclusively determined by the decision and judgment of the state court and these questions are not before this court for review.

If the court shall hold that it has jurisdiction to review the judgment of the supreme court of Minnesota, we submit in all confidence that upon the merits of the controversy the judgment should be affirmed.

CLIFFORD L. HILTON,

Attorney General.

JAMES E. MARKHAM,

Assistant Attorney General.

FILED

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JAMES D. MAH

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Supreme Court of the United States.

October Term, 1930.

No. 79.

JOSEPH GILBERT,

Plaintiff in Error,

vs.

STATE OF MINNESOTA.

SUPPLEMENTAL BRIEF FOR DEFENDANT IN ERROR.

CLIFFORD L. HILTON,
Attorney General.
JAMES E. MARKHAM,
Assistant Attorney General,
St. Paul, Minnesota.



INDEX.

ARGUMENT.

I.

| | Page. |
|---|-------|
| Jurisdiction of this court to review the judgment complained of | 1 |
| Gibson v. Chouteau, 8 Wall. 314..... | 2 |
| Hoyt v. Sheldon, 1 Black 518..... | 3 |
| Maxwell v. Newbold, 18 How. 511..... | 3 |
| Jett Distilling Co. v. Carrollton, 252 U. S. 1 | 3 |
| Sayward v. Denney, 158 U. S. 180..... | 3 |

II.

| | |
|---|---|
| Seditious or treasonable utterances not permitted because of constitutional guaranty of freedom of speech | 4 |
| Schaefer v. United States, 251 U. S. 466. | 4 |
| Pierce v. United States, 252 U. S. 239... | 4 |



Supreme Court of the United States.

October Term, 1920.

No. 79.

JOSEPH GILBERT,

Plaintiff in Error,

vs.

STATE OF MINNESOTA.

SUPPLEMENTAL BRIEF FOR DEFENDANT IN ERROR.

I.

It does not appear, as assumed by counsel for the plaintiff in error, that in his brief filed in the state court there was specially set up and claimed any right, privilege or immunity under the consti-

tution of the United States. There was a generous assignment of errors, thirty-eight in all, but in none of them was any claim of immunity from prosecution asserted upon the ground that the statute upon which the prosecution rests is invalid because in conflict with any provision of the constitution of the United States. In part III of that brief at page 56 it is declared that in view of the previous decisions of the supreme court of Minnesota, it would avail the defendant nothing to renew arguments tending to support the proposition that the statute in question is void as being repugnant to the constitution of the state and the constitution of the United States, and hence such contention is passed by without argument. In the brief for the state, which also is now returned to this court for its consideration, no reference is made to any constitutional question and no argument concerning the validity of the statute is there presented. As a matter of fact, as we have shown in our principal brief in this court, no such contention was set up in the trial court and was in no way before the supreme court of Minnesota for decision.

It is necessary to the jurisdiction of this court that the record show that the claim of immunity under the constitution was specially set up and claimed in the state court, and that the right asserted thereunder was denied. The argument of counsel in the court below cannot be looked to for this purpose.

The right on which the party relies must have been called to the attention of the court in some proper way and the decision of the court must have been against the right claimed.

Hoyt v. Sheldon, 1 Black 518;
Maxwell v. Newbold, 18 How. 511.

Nor can the certificate or declaration of the state court, to the effect that a right of immunity against the prosecution, because in conflict with the constitution of the United States, was set up and denied, have the effect to give this court jurisdiction.

Sayward v. Denny, 158 U. S. 180.

The mere objection to an exercise of authority under a statute, whose validity is not attacked, cannot be made the basis of a writ of error from this court. There must be a substantial challenge of the validity of the statute or authority upon a claim that it is repugnant to the federal constitution, treaties or laws, so as to require the state court to decide the question of validity in disposing of the contention.

Jett Distilling Co. v. Carrollton, 252 U. S. 1.

II.

That the constitutional guaranty of free speech cannot be invoked to justify the activities of the enemies of the United States, including treasonable and seditious utterances in time of danger, is force-

fully stated in two decisions of this court handed down since our principal brief in this case was printed, and we respectfully recall those decisions to the attention of the court.

Schaefer v. United States, 251 U. S. 466;
Pierce v. United States, 252 U. S. 239.

The logic of these decisions applied to the facts appearing upon the record in this case necessarily leads to an affirmance of the conviction.

CLIFFORD L. HILTON,
Attorney General.
JAMES E. MARKHAM,
Assistant Attorney General.

GILBERT *v.* STATE OF MINNESOTA.

ERROR TO THE SUPREME COURT OF THE STATE OF
MINNESOTA.

No. 78. Argued November 10, 1900.—Decided December 13, 1900.

1. The law of Minnesota declaring it a misdemeanor for any person to teach or advocate by any written or printed matter or by oral speech that citizens of the State should not aid or assist the United States in prosecuting or carrying on war with the public enemies of the United States, is valid under the Federal Constitution. P. 327.
2. Such an enactment may be upheld both as a legitimate measure of

Opinion of the Court.

254 U. S.

cooperation by the State with the United States, not in conflict with the federal war power, p. 328; and also as an exercise of the police power to preserve the peace of the State. P. 331. *Halter v. Nebraska*, 265 U. S. 34; *Prasser v. Illinois*, 116 U. S. 282.

3. The right of free speech does not cover false and malicious misrepresentations of the objects and motives of this country in entering upon a war, made in a public speech for the purpose of discouraging the recruiting of troops, while the war is flagrant and arms are being raised. P. 332.

141 Minnesota, 263, affirmed.

THE case is stated in the opinion.

Mr. George Nordlin and Mr. Frederic A. Pike for plaintiff in error.

Mr. James E. Markham, Assistant Attorney General of the State of Minnesota, with whom *Mr. Clifford L. Hilton*, Attorney General of the State of Minnesota, was on the briefs, for defendant in error.

MR. JUSTICE MCKENNA delivered the opinion of the court.

A statute of Minnesota makes it unlawful "to interfere with or discourage the enlistment of men in the military or naval forces of the United States or of the State of Minnesota."

Its second and third sections are as follows:

"Sec. 2. Speaking by word of mouth against enlistment unlawful.—It shall be unlawful for any person in any public place, or at any meeting where more than five persons are assembled, to advocate or teach by word of mouth or otherwise that men should not enlist in the military or naval forces of the United States or the state of Minnesota.

"Sec. 3. Teaching or advocating by written or printed matter against enlistment unlawful.—It shall be un-

law², for any person to teach or advocate by any written or printed matter whatsoever, or by oral speech, that the citizens of this state should not aid or assist the United States in prosecuting or carrying on war with the public enemies of the United States."

Section 4 defines a citizen to be "any person within the confines of the state," and § 5 declares violations of the act to be gross misdemeanors and punishable by fine and imprisonment.

The indictment charged that Gilbert at a time and place designated in the State, and under the conditions prohibited by § 2, the United States being then and there at war with the Kingdom and Imperial Government of Germany, used the following language:

"We are going over to Europe to make the world safe for democracy, but I tell you we had better make America safe for democracy first. You say, what is the matter with our democracy. I tell you what is the matter with it: Have you had anything to say as to who should be president? Have you had anything to say as to who should be Governor of this state? Have you had anything to say as to whether we would go into this war? You know you have not. If this is such a great democracy, for Heaven's sake why should we not vote on conscription of men. We were stampeded into this war by newspaper rot to pull England's chestnuts out of the fire for her. I tell you if they conscripted wealth like they have conscripted men, this war would not last over forty-eight hours. . . ."

A demurrer to the indictment was overruled, and Gilbert was tried and convicted. The judgment was that he pay a fine of \$500 and be imprisoned in the county jail of the County of Goodhue for one year, and pay the costs of the prosecution. The judgment was affirmed by the Supreme Court of the State.

The statute, it is contended, is repugnant to the Constitution of the United States in that, (1) "all power of legis-

lation regarding the subject matter contained in the statute is conferred upon Congress and withheld from the States." (2) And that the statute is obnoxious to the "inherent right of free speech respecting the concerns, activities and interests of the United States of America and its Government."

We shall consider the objections in their order. It is said in support of the exclusive power in Congress, that Congress alone can under the Constitution "provide for the common defense and general welfare of the United States," "declare war," "raise and support armies," "make rules for the government and regulation of the land and naval forces."¹² To these affirmative delegations of power to Congress, there is added, it is said, a prohibition to the States to "engage in war, unless actually invaded, or in such imminent danger as will not admit of delay." And, "that the State of Minnesota is not a party to the war now [then] being waged. And if it has not engaged in any war, and until it does so engage, legislation such as a belligerent sovereign might enact, is beyond its province." These specific grounds of objection to the statute are attempted to be reinforced by analogy to the power of Congress over interstate commerce to the exclusion of the interference of the States.

The basis of the objections seem to be that plaintiff in error had an accountability as a citizen of the United States different from that which he had as a citizen of the State, and that, therefore, he was not subject to the power or jurisdiction of the State exercised in the act under review. Manifestly, to support the contention something more is necessary than the letter of the cited constitutional provisions. The broader proposition must be established that a State has no interest or concern in the United States or its armies or power of protecting them from public enemies.

Undoubtedly, the United States can declare war and it,

not the States, has the power to raise and maintain armies. But there are other considerations. The United States is composed of the States, the States are constituted of the citizens of the United States, who also are citizens of the States, and it is from these citizens that armies are raised and wars waged, and whether to victory and its benefits, or to defeat and its calamities, the States as well as the United States are intimately concerned. And whether to victory or defeat depends upon their morale, the spirit and determination that animates them—whether it is repellent and adverse or eager and militant; and to maintain it eager and militant against attempts at its debasement in aid of the enemies of the United States, is a service of patriotism; and from the contention that it encroaches upon or usurps any power of Congress, there is an instinctive and immediate revolt. Cold and technical reasoning in its minute consideration may indeed insist on a separation of the sovereignties and resistance in each to any co-operation from the other, but there is opposing demonstration in the fact that this country is one composed of many and must on occasions be animated as one and that the constituted and constituting sovereignties must have power of co-operation against the enemies of all. Of such instance, we think, is the statute of Minnesota and it goes no farther. It, therefore, has none of the character of the illustrations adduced against it, nor the possibility of conflict of powers which they condemn. This was the view of the Supreme Court of the State, and the court expressed it with detail and force of reasoning. The same view of the statute was expressed in *State v. Helm*, 130 Minnesota, 267, where, after a full discussion, the contention was rejected that the Espionage Law of June 18, 1917, abrogated or superseded the statute, the court declaring that the fact that the citizens of the State are also citizens of the United States and owe a duty to the Nation, does not absolve them from duty to the State nor preclude a State from

enforcing such duty. "The same act," it was said, "may be an offense or transgression of the laws of both" Nation and State, and both may punish it without a conflict of their sovereignties. Numerous cases were cited commencing with *Moore v. Illinois*, 14 How. 13, and terminating with *Halter v. Nebraska*, 205 U. S. 34.¹

The latter case is especially pertinent in its sentiment and reasoning. It sustained a statute of Nebraska directed against the debasement of the National flag to trade uses against the contention that the flag being the National emblem was subject only to the control of the National power. In sustaining the statute it was recognized that in a degradation of the flag there is a degradation of all of which it is the symbol, that is, "the National power and National honor" and what they represent and have in trust. To maintain and reverence these, to "encourage patriotism and love of country among its people," may be affirmed, it was said, to be a duty that rests upon each State, and that "when, by its legislation, the State encourages a feeling of patriotism towards the Nation, it necessarily encourages a like feeling towards the State."

And so with the statute of Minnesota. An army is an instrument of government, a necessity of its power and honor, and it may be, of its security. An army, of course, can only be raised and directed by Congress, in neither has

¹ In *Gustafson v. Rhinow*, 144 Minnesota, 415, the Supreme Court of Minnesota sustained a law of the State giving to soldiers who served in the war against Germany \$15 for each month or fraction of a month of service, against an attack that the soldiers were soldiers of the United States. The court expressed the concern and interest of the State as follows: "It is true that the Federal government alone has power to declare war, but having done so, the government and people of Minnesota became bound to defend and support the national government. While the states of the nation are sovereign in a certain field, they are also members of the family of states constituting the national organization."

325.

Opinion of the Court.

the State power, but it has power to regulate the conduct of its citizens and to restrain the exertion of baleful influences against the promptings of patriotic duty to the detriment of the welfare of the Nation and State. To do so is not to usurp a National power, it is only to render a service to its people, as Nebraska rendered a service to its people when it inhibited the debasement of the flag.

We concur, therefore, in the final conclusion of the court, that the State is not inhibited from making "the national purposes its own purposes to the extent of exerting its police power to prevent its own citizens from obstructing the accomplishment of such purposes."

The statute, indeed, may be supported as a simple exertion of the police power to preserve the peace of the State. As counsel for the State say, "The act under consideration does not relate to the raising of armies for the national defense, nor to rules and regulations for the government of those under arms. It is simply a local police measure, aimed to suppress a species of seditious speech which the legislature of the State has found objectionable. If the legislature has otherwise power to prohibit utterances of the character of those here complained of, the fact that such suppression has some contributory effect on the federal function of raising armies is quite beside the question." And the State knew the conditions which existed and could have a solicitude for the public peace, and this record justifies it. Gilbert's remarks were made in a public meeting. They were resented by his auditors. There were protesting interruptions, also accusations and threats against him, disorder and intimations of violence. And such is not an uncommon experience. On such occasions feeling usually runs high and is impetuous; there is a prompting to violence and when violence is once yielded to, before it can be quelled, tragedies may be enacted. To preclude such result or a

Opinion of the Court.

254 U. S.

danger of it is a proper exercise of the power of the State. *Presser v. Illinois*, 116 U. S. 252, 267.

The next contention is, that the statute is violative of the right of free speech, and therefore void. It is asserted that the right of free speech is a natural and inherent right, and that it, and the freedom of the press, were "regarded as among the most sacred and vital possessed by mankind, when this nation was born, when its constitution was framed and adopted." And the contention seems necessary for the plaintiff in error to support. But without so deciding or considering the freedom asserted as guaranteed or secured either by the Constitution of the United States or by the constitution of the State, we pass immediately to the contention and for the purposes of this case may concede it, that is, concede that the asserted freedom is natural and inherent, but it is not absolute, it is subject to restriction and limitation. And this we have decided. In *Schenck v. United States*, 249 U. S. 47, 52, we distinguished times and occasions and said that "the most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic"; and in *Frohwerk v. United States*, 249 U. S. 204, 206, we said "that the First Amendment while prohibiting legislation against free speech as such cannot have been, and obviously was not, intended to give immunity for every possible use of language." See also, *Debs v. United States*, 249 U. S. 211; *Abrams v. United States*, 250 U. S. 616. In *Schaefer v. United States*, 251 U. S. 466, commenting on those cases and their contentions it was said that the curious spectacle was presented of the Constitution of the United States being invoked to justify the activities of anarchy or of the enemies of the United States, and by a strange perversion of its precepts it was adduced against itself. And we did more than reject the contention, we forestalled all repetitions of it, and the contention in the case at bar is a repetition of it. It is a direct assault upon

325.

Opinion of the Court.

the statute of Minnesota, and a direct assertion in spite of the prohibition of the statute that one can by speech, teach or advocate that the citizens of the State should not aid or assist "the United States in prosecuting or carrying on war with the public enemies of the United States," and be protected by the Constitution of the United States.

The same conditions existed as in the cited cases, that is, a condition of war and its emergency existed, and there was explicit limitation to § 3 in the charge of the trial court to the jury. The court read §§ 2 and 3 of the statute to the jury and said, "I take it from the reading of the whole indictment that it is prosecuted under Section 3, which I have just read to you."

Gilbert's speech had the purpose they denounce. The Nation was at war with Germany, armies were recruiting, and the speech was the discouragement of that—its purpose was necessarily the discouragement of that. It was not an advocacy of policies or a censure of actions that a citizen had the right to make. The war was flagrant; it had been declared by the power constituted by the Constitution to declare it, and in the manner provided for by the Constitution. It was not declared in aggression, but in defense, in defense of our national honor, in vindication of the "most sacred rights of our Nation and our people."¹

This was known to Gilbert for he was informed in affairs and the operations of the Government, and every word that he uttered in denunciation of the war was false, was deliberate misrepresentation of the motives which impelled it, and the objects for which it was prosecuted. He could have had no purpose other than that of which he was charged. It would be a travesty on the constitutional privilege he invokes to assign him its protection.

Judgment affirmed.

¹Words of President Wilson in his War Message to Congress, April 2, 1917.

BRANDEIS, J., dissenting.

254 U. S.

MR. JUSTICE HOLMES concurs in the result.

THE CHIEF JUSTICE, being of the opinion that the subject-matter is within the exclusive legislative power of Congress, when exerted, and that the action of Congress has occupied the whole field, therefore dissents.

MR. JUSTICE BRANDEIS, dissenting.

Joseph Gilbert, manager of the organization department of the Non-partisan League, was sentenced to fine and imprisonment for speaking on August 18, 1917, at a public meeting of the League, words held to be prohibited by c. 463 of the laws of Minnesota, approved April 20, 1917. Gilbert was a citizen of the United States, and apparently of a State other than Minnesota. He claimed reasonably that the statute violated rights guaranteed to him by the Federal Constitution. This claim has been denied; and, in my opinion, erroneously.

The Minnesota statute was enacted during the World War; but it is not a war measure. The statute is said to have been enacted by the State under its police power to preserve the peace;—but it is in fact an act to prevent teaching that the abolition of war is possible. Unlike the Federal Espionage Act of June 15, 1917, c. 30, 40 Stat. 217, 219, it applies equally whether the United States is at peace or at war. It abridges freedom of speech and of the press, not in a particular emergency, in order to avert a clear and present danger, but under all circumstances. The restriction imposed relates to the teaching of the doctrine of pacifism and the legislature in effect proscribes it for all time. The statute does not in terms prohibit the teaching of the doctrine. Its prohibition is more specific and is directed against the teaching of certain applications of it. This specification operates, as will be seen, rather to extend, than to limit the scope of the prohibition.

Sections 1 and 2 prohibit teaching or advocating by printed matter, writing or word of mouth, that men should not enlist in the military or naval forces of the United States. The prohibition is made to apply whatever the motive, the intention, or the purpose of him who teaches. It applies alike to the preacher in the pulpit, the professor at the university, the speaker at a political meeting, the lecturer at a society or club gathering. Whatever the nature of the meeting and whether it be public or private, the prohibition is absolute, if five persons are assembled. The reason given by the speaker for advising against enlistment is immaterial. Young men considering whether they should enter these services as a means of earning a livelihood or as a career, may not be told that, in the opinion of the speaker, they can serve their country and themselves better by entering the civil service of State or Nation, or by studying for one of the professions, or by engaging in the transportation service, or in farming or in business, or by becoming a workman in some productive industry. Although conditions may exist in the Army or the Navy which are undermining efficiency, which tend to demoralize those who enter the service and would render futile their best efforts, the State forbids citizens of the United States to advocate that men should not enlist until existing abuses or defects are remedied. The prohibition imposed by the Minnesota statute has no relation to existing needs or desires of the Government. It applies although recruiting is neither in process nor in contemplation. For the statute aims to prevent not acts but beliefs. The prohibition imposed by § 3 is even more far-reaching than that provided in §§ 1 and 2. Section 3 makes it punishable to teach in any place a single person that a citizen should not aid in carrying on a war, no matter what the relation of the parties may be. Thus the statute invades the privacy and freedom of the home. Father and mother may not follow the promptings of religious belief,

BRANDEIS, J., dissenting.

254 U. S.

of conscience or of conviction, and teach son or daughter the doctrine of pacifism. If they do any police officer may summarily arrest them.

That such a law is inconsistent with the conceptions of liberty hitherto prevailing seems clear. But it is said that the guaranty against abridging freedom of speech contained in the First Amendment of the Federal Constitution applies only to federal action; that the legislation here complained of is that of a State; that the validity of the statute has been sustained by its highest court as a police measure; that the matter is one of state concern; and that, consequently this court cannot interfere. But the matter is not one merely of state concern. The state law affects directly the functions of the Federal Government. It affects rights, privileges and immunities of one who is a citizen of the United States; and it deprives him of an important part of his liberty. These are rights which are guaranteed protection by the Federal Constitution; and they are invaded by the statute in question.

Congress has the exclusive power to legislate concerning the Army and the Navy of the United States, and to determine, among other things, the conditions of enlistment. It has likewise exclusive power to declare war, to determine to what extent citizens shall aid in its prosecution and how effective aid may best be secured. Congress, which has power to raise an army and naval forces by conscription when public safety demands, may, to avert a clear and present danger, prohibit interference by persuasion with the process of either compulsory or voluntary enlistment. As an incident of its power to declare war it may, when the public safety demands, require from every citizen full support, and may, to avert a clear and present danger, prohibit interference by persuasion with the giving of such support. But Congress might conclude that the most effective Army or Navy would be one composed wholly of men who had enlisted with full appreciation of

the limitations and obligations which the service imposes, and in the face of efforts to discourage their doing so.¹ It might conclude that the most effective Army would be one composed exclusively of men who are firmly convinced that war is sometimes necessary if honor is to be preserved, and also that the particular war in which they are engaged is a just one. Congress, legislating for a people justly proud of liberties theretofore enjoyed and suspicious or resentful of any interference with them, might conclude that even in times of grave danger, the most effective means of securing support from the great body of citizens is to accord to all full freedom to criticise the acts and administration of their country, although such freedom may be used by a few to urge upon their fellow-citizens not to aid the Government in carrying on a war, which reason or faith tells them is wrong and will, therefore, bring misery upon their country.

The right to speak freely concerning functions of the Federal Government is a privilege or immunity of every citizen of the United States which, even before the adoption of the Fourteenth Amendment, a State was powerless to curtail. It was held in *Crandall v. Nevada*, 6 Wall. 35, 44, that the United States has the power to call to the seat of government or elsewhere any citizen to aid it in the conduct of public affairs; that every citizen has the correlative right to go there or anywhere in the pursuit of public or private business; and that "no power can exist in a State to obstruct this right which would not enable it to defeat the purpose for which the government was established." The right of a citizen of the United States to take part, for his own or the country's benefit, in the making of federal laws and in the conduct of the Government, necessarily includes the right to speak or write about them; to endeavor to make his own opinion concerning laws existing

¹ See General John A. Logan, "The Volunteer Soldier of America," pp. 89-91; Col. F. N. Maude in the *Contemporary Review*, v. 189, p. 37.

or contemplated prevail; and, to this end, to teach the truth as he sees it. Were this not so "the right of the people peaceably to assemble for the purpose of petitioning Congress for a redress of grievances, or for any thing else connected with the powers or duties of the national government" would be a right totally without substance. See *United States v. Cruikshank*, 92 U. S. 542, 552; *Slaughter-House Cases*, 16 Wall. 36, 79. Full and free exercise of this right by the citizen is ordinarily also his duty; for its exercise is more important to the Nation than it is to himself. Like the course of the heavenly bodies, harmony in national life is a resultant of the struggle between contending forces. In frank expression of conflicting opinion lies the greatest promise of wisdom in governmental action; and in suppression lies ordinarily the greatest peril. There are times when those charged with the responsibility of Government, faced with clear and present danger, may conclude that suppression of divergent opinion is imperative; because the emergency does not permit reliance upon the slower conquest of error by truth. And in such emergencies the power to suppress exists. But the responsibility for the maintenance of the Army and Navy, for the conduct of war and for the preservation of government, both state and federal, from "malice domestic and foreign levy" rests upon Congress. It is true that the States have the power of self-preservation inherent in any government to suppress insurrection and repel invasion; and to that end they may maintain such a force of militia as Congress may prescribe and arm. *Houston v. Moore*, 5 Wheat. 1. But the duty of preserving the state governments falls ultimately upon the Federal Government, *Luther v. Borden*, 7 How. 1, 77; *Prize Cases*, 2 Black, 635, 668; *Texas v. White*, 7 Wall. 700, 727. And the superior responsibility carries with it the superior right. The States act only under the express direction of Congress. See National Defence Act, June 3, 1916, c. 134, 39 Stat.

166; Selective Service Act, May 18, 1917, c. 15, 40 Stat. 76. The fact that they may stimulate and encourage recruiting, just as they may stimulate and encourage interstate commerce, *Monongahela Navigation Co. v. United States*, 148 U. S. 312, 329, does not give them the power by police regulations or otherwise to exceed the authority expressly granted to them by the Federal Government. See *Kurtz v. Moffitt*, 115 U. S. 487; *Prigg v. Pennsylvania*, 16 Pet. 539. Congress, being charged with responsibility for those functions of Government, must determine whether a paramount interest of the Nation demands that free discussion in relation to them should be curtailed. No State may trench upon its province.

Prior to the passage of the Minnesota statute it had been the established policy of the United States, departed from only once in the life of the Nation,¹ to raise its military and naval forces in times of war as in peace exclusively by voluntary enlistment. Service was deemed a privilege of Americans, not a duty exacted by law. Specific provision had been made to ensure that enlistment should be the result of free, informed and deliberate choice.² The law of the United States left an American as

¹Act of March 3, 1863, c. 75, 12 Stat. 731.

²Recruiting officers were required to explain to every man before he signed the enlistment paper the nature of the service, the length of the term, the amount of pay, clothing, rations and other allowances to which a soldier is entitled by law; and to read and explain to the applicant many of the Articles of War before administering to him the oath of enlistment. U. S. Army Regulations, 1913, paragraphs 854, 856.

The following is contained in the instructions sent to all officers and men assigned to recruiting duty:

"All progress and success rests fundamentally on truth. Hence never resort to indirection or misrepresentation or suppression of part of the facts in order to push a wavering case over the line. Recruits signed up on misrepresented facts or partial information do not make good soldiers. They resent being fooled just as you would, and will never yield their full value to a Government whose agents obtained their services in a way not fully square. Therefore tell your prospect anything he

free to advise his fellows not to enter the Army or the Navy as he was free to recommend their enlistment. The Government had exacted from American citizens no service except the prompt payment of taxes. Although war had been declared such was still the policy and the law of the United States when Minnesota enacted the statute here in question.

The Minnesota statute was, when enacted, inconsistent with the law of the United States, because at that time Congress still permitted free discussion of these governmental functions. Later, and before Gilbert spoke the words complained of, the Federal Espionage Law was enacted, but the Minnesota statute was also inconsistent with it. The federal act did not prohibit the teaching of any doctrine; it prohibited only certain tangible obstructions to the conduct of the existing war with the German Empire committed with criminal intent. It was so understood and administered by the Department of Justice.¹ Under the Minnesota law, teaching or advice that men

wants to know about the Army. If the real facts are not strong enough to win him, you don't want him anyway." Recruiters Handbook, United States Army, p. 16.

¹ "The general policy of the Attorney General (Mr. Gregory) toward free speech has been well understood and adhered to by his subordinates with a good deal of consistency. From the outset, recognizing that free expression of public opinion is the life of the nation, we have endeavored to impress on our subordinates the necessity of keeping within the limits of policy established by Congress and bearing in mind at all times the constitutional guarantees. Repeatedly their attention has been called to the fact that expression of private or public opinion relating to matters of governmental policy or of political character must not be confused with wilful attempts to interfere with our conduct of the war. At all times we have had before us the dangers which follow attempts to restrain public discussion and so far as instructions issued by the Attorney General have been concerned, they have consistently and at all times emphasized this general policy." John Lord O'Brian, "Civil Liberty in War Time," Report of New York State Bar Association, vol. 42, p. 308.

should not enlist is made punishable although the jury should find (1) that the teaching or advocacy proved wholly futile and no obstruction resulted; (2) that there was no intent to obstruct; and the court, taking judicial notice of facts, should rule (3) that, when the words were written or spoken, the United States was at peace with all the world. That this conflict was not merely a technical one but a cause of real embarrassment and danger to the Federal Government, we learn from one of the officials entrusted with the administration of the Espionage Act:

"In the State of Minnesota because of what was claimed to be either inadequate federal law or inadequate federal administration, state laws of a sweeping character were passed and enforced with severity. Whether justified or not in adopting this policy of repression, the result of its adoption increased discontent and the most serious cases of alleged interference with civil liberty were reported to the federal government from that state."¹

In *Johnson v. Maryland*, ante, 51, this court held that the power of Congress to establish post roads precluded the State from requiring of a post-office employee using the state highway in the transportation of mail the customary evidence of competency to drive a motor truck, although the danger to public safety was obvious and it did not appear that the Federal Government had undertaken to deal with the matter by statute or regulation. The prohibition of state action rests, as the court pointed out there, "not upon any consideration of degree but upon the entire absence of power on the part of the States to touch . . . the instrumentalities of the United States." As exclusive power over enlistments in the Army and the Navy of the United States and the responsibility for the conduct of war is vested by the Federal Constitution in Congress,

¹ Report of New York Bar Association, vol. 42, p. 296.

BRANDEN, J., dissenting.

254 U. S.

legislation by a State on this subject is necessarily void unless authorized by Congress. It is so when Congress makes no regulation, because by omitting to make regulations Congress signifies its intention that, in this respect, the action of the citizen shall be untrammelled. This would be true, even if the subject in question were one over which Congress and the States have concurrent power. For where Congress has occupied a field theretofore open also to state legislation, it necessarily excludes all such. *Southern Ry. Co. v. Reid*, 222 U. S. 424; *Chicago, Rock Island & Pacific Ry. Co. v. Hardwick Farmers Elevator Co.*, 226 U. S. 426. Here Congress not only had exclusive power to act on the subject; it had exercised that power directly by the Espionage Law before Gilbert spoke the words for which he was sentenced. The provisions of the Minnesota statute and its title preclude a contention that its purpose was to prevent breaches of the peace. Compare *Ex parte Meckel*, 220 S. W. Rep. (Tex.) 81. But neither the fact that it was a police regulation, *New York Central R. R. Co. v. Winfield*, 244 U. S. 147, nor the fact that it was legislation in aid of congressional action would, if true, save the statute. For "when the United States has exercised its exclusive powers . . . so far as to take possession of the field, the States can no more supplement its requirements than they can annul them." *Pennsylvania R. R. Co. v. Public Service Commission*, 250 U. S. 566, 569; *Northern Pacific Ry. Co. v. Washington*, 222 U. S. 370. The exclusiveness of the power of the Federal Government with which this state legislation interferes springs from the very roots of political sovereignty. The States may not punish treason against the United States, *People v. Lynch*, 11 Johns. (N. Y.) 549; *Ex parte Quarrier*, 2 W. Va. 569; although indirectly acts of treason may affect them vitally. No more may they arrogate to themselves authority to punish the teaching of pacifism which the legislature of Minnesota appears